97TH CONGRESS
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COMPILATION

OF THE

SOCIAL SECURITY LAWS

✦

INCLUDING THE SOCIAL SECURITY ACT, AS AMENDED, AND RELATED ENACTMENTS THROUGH JANUARY 1, 1981

✦

VOLUME I

U.S. GOVERNMENT PRINTING OFFICE
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PREFACE

The Social Security Act

The original Social Security Act was P.L. 74-271 (49 Stat. 620), approved August 14, 1935. That Social Security Act has been amended a number of times. A list of the laws amending the Social Security Act is in Appendix J, Volume II, p. 1092.

Administration of the Social Security Act

The Social Security Board was responsible for administration of the original Social Security Act except for parts 1, 2, 3, and 5 of title V (which were administered by the Children's Bureau, then in the Department of Labor); part 4 of title V which increased the appropriations authorized for carrying out the Act of June 2, 1920 (now see Rehabilitation Act of 1973); and title VI which authorized grants to the States for public health work.

The Social Security Board was transferred to the Federal Security Agency by Reorganization Plan No. 1 of 1939 and the Board's functions were thenceforth to be carried on under the direction and supervision of the Federal Security Administrator. Reorganization Plan No. 2 of 1946 [see Vol. II, p. 1152] transferred the functions of the Social Security Board, as well as the functions of the Children's Bureau and the functions of the Secretary of Labor under title V of the Social Security Act, to the Federal Security Administrator and the Board was abolished.

The Bureau of Employment Security, with its unemployment compensation and employment service functions, was transferred from the Federal Security Agency to the Department of Labor by Reorganization Plan No. 2 of 1949 [see Vol. II, p. 1153].

The Department of Health, Education, and Welfare was established by Reorganization Plan No. 1 of 1953 [see Vol. II, p. 1155] with a Secretary of Health, Education, and Welfare as the head of the Department. All functions of the Federal Security Agency, which was abolished, were transferred to the Department of Health, Education, and Welfare. The functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare.

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by P.L. 96-88, § 509, approved October 17, 1979. That public law did not amend references to the Secretary in the Social Security Act. The Department of Health and Human Services redesignation was effective May 4, 1980 (45 Federal Register 29642; May 5, 1980). The Department of Education which was established by P.L. 96-88 was activated May 4, 1980 (Executive Order 12212 of May 2, 1980; 45 Federal Register 29557; May 5, 1980).

This Compilation of the Social Security Laws

This compilation is current through January 1, 1981. This compilation contains:

Volume I

(a) Table of Contents;
(b) The Social Security Act, as in Effect January 1, 1981;
(c) Internal Revenue Code—Selected Provisions; and
(d) Index to the Social Security Act.

Volume II

(a) Table of Contents;
(b) Social Security Act Appendixes;
(c) Provisions of public laws and statutes which are cited in the Social Security Act, and other provisions of the Internal Revenue Code;
(d) Provisions of public laws which affect administration of the Social Security Act but do not amend it; and
(e) Provisions of the Social Security Act which have been superseded.

Effect of Compilation

This Compilation of the Social Security Laws is not prima facie evidence of the provisions of the Social Security Act or other laws or statutes which are included. This compilation has been prepared solely for convenient reference purposes.

Caution

Although they are not a part of the text of the laws in which they appear, citations have been included which will enable the reader to locate the same material in the United States Code (U.S.C.). These matching citations to the United States Code are shown within brackets after the public law section, as, for example:

[Social Security Act] Sec. 201. [42 U.S.C. 401]

[Public Law 96-499] Sec. 903. [42 U.S.C. 1395b-1 note].

Thus, both sections may be found in Title 42 of the United States Code, the first at section 401 and the second in the notes following section 1395b-1. "[None assigned]" means the provision is not in the United States Code. The provision can be found in the public law.

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* Information within [ ] is supplied.

SOCIAL SECURITY ACT[1]

(As Amended through January 1, 1981)

AN ACT

To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[TITLE I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE AND MEDICAL ASSISTANCE FOR THE AGED][2]

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[1] P.L. 74-271, approved August 14, 1935, 49 Stat. 620.

[2] Title I of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under title I. The Administration for Public Services, Office of Human Development Services, administers social services under title I.

Title I appears in the United States Code as §§ 301-306, subchapter I, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title I are contained in subtitle A and chapter XIII, title 45, Code of Federal Regulations.

P.L. 92-603, § 303, *repealed* title I effective January 1, 1974, *except* with respect to Puerto Rico, Guam, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a title I social services program if it chooses; see P.L. 94-241, approved March 24, 1976, 90 Stat. 263, in Appendix E, in Vol. II, p. 1016.

See P.L. 82-183, § 618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions, in Vol. II, p. 1528.

See P.L. 87-543, § 141(b), with respect to ineligibility to receive payments under title I where payments have been made under title XVI, in Vol. II, p. 1555.

See P.L. 88-352 (Civil Rights Act of 1964), for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 89-97, § 121(b), with respect to restrictions on payment to a State receiving payments under title XIX, in Vol. II, p. 1435.

See P.L. 90-248 (Social Security Amendments of 1967), § 234(c), with respect to nursing homes which do not meet all requirements of the State for licensure, in Vol. II, p. 1444.

See P.L. 90-577, §§ 1-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 93-66, § 213, with respect to recruitment and selection of employees to administer the Federal supplemental security income program, in Vol. II, p. 1472.

See P.L. 93-233, § 11, with respect to continuation of certain demonstration projects for States other than the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, in Vol. II, p. 1614.

See P.L. 93-233, § 19(b), with respect to transition from State plans to the Federal supplemental security income program, in Vol. II, p. 1617.

See P.L. 93-510, §§ 2-13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

See P.L. 95-291, §§ 1, 2, and 5, with respect to reimbursement of certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

See P.L. 96-223, § 313(c)(1), with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1735.

[3] This table of contents does not appear in the law.

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APPROPRIATION

SECTION 1. [42 U.S.C. 301] For the purpose (a) of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals, (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare[3A] (hereinafter referred to as the "Secretary"), State plans for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged.

STATE OLD-AGE AND MEDICAL ASSISTANCE PLANS

SEC. 2. [42 U.S.C. 302] (a) A State plan for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put it to effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure

[3A] This is deemed to refer, effective on May 4, 1980, to the Secretary of Health and Human Services under section 509(a) of the Department of Education Organization Act (P.L. 96-88, 93 Stat. 695).

of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary[4] to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than $7.50 per month of any income and (ii) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder;[5]

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[4] P.L. 91-648, § 208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). See P.L. 91-648, § 208(a)(3)(D), in Vol. II, p. 1598. Functions of the Commission were transferred, effective January 1, 1979, to the Director of the office of Personnel Management by section 102 of Reorganization Plan No. 2 of 1978, 5 U.S.C. 1101 note.

[5] See P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing, in Vol. II, p. 1527.

See P.L. 88-525 (Food Stamp Act of 1977), § 8, with respect to exclusion from income and resources of the value of food stamps, in Vol. II, p. 1422.

See P.L. 89-73 (Older Americans Act of 1965), § 709, with respect to the exclusion from income applicable before October 1, 1978, to the cost of a "nutrition project" which supplied at least one hot meal a day to eligible recipients, and § 211(b), with respect to an exclusion applicable to other project costs, in Vol. II, p. 1571, 1574.

Continued

(B) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) if the State plan includes medical assistance for the aged—

(A) provide for inclusion of some institutional and some noninstitutional care and services;

(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State but are absent therefrom;

(D) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of such assistance; and

(E) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of

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See P.L. 90-575 (Higher Education Amendments of 1968), § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), § 216, with respect to exclusion from income of payments made under that act, in Vol. II, p. 1597.

See P.L. 93-86 (Agriculture and Consumer Protection Act of 1973), § 4(c), with respect to the effect of receipt of Supplemental Security Income benefits (under title XVI of this act) in determining eligibility for food stamps of other members of the household, in Vol. II, p. 1607.

See P.L. 93-113 (Domestic Volunteer Service Act of 1973), § 404(g), with respect to exclusion from income and resources of payments to volunteers under that act, in Vol. II, p. 1610.

See P.L. 93-203 (Comprehensive Employment and Training Act of 1973), § 446, with respect to exclusion from income and resources of earnings and allowances received by a youth under Youth Employment Demonstration Programs in determining eligibility of the youth's family for, and the amount of, benefits, in Vol. II, p. 1612.

See P.L. 94-164 (Revenue Adjustment Act of 1975), § 2(d), with respect to exclusion from income and resources of certain Federal income tax credits/refunds before January 1, 1980, in Vol. II, p. 1654.

See P.L. 95-171, § 10(a), for exclusion from income of certain income related to putting sitters in touch with individuals who wished to employ them, in Vol. II, p. 1679.

See P.L. 95-557 (Housing and Community Development Amendments of 1978), § 410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the Housing Act of 1959 (see P.L. 86-372, § 202, in Vol. II, p. 1543.), in Vol. II, p. 1698.

any medical assistance for the aged correctly paid on behalf of such individual under the plan;

(12) if the State plan includes assistance to or in behalf of individuals who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients who would otherwise need care in such institutions, including appropriate medical treatment and other assistance; for services referred to in section 3(a)(4)(A)(i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients; and

(13) if the State plan includes assistance to or in behalf of patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preced-

ing the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title.

(c) Nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

PAYMENT TO STATES

SEC. 3. [42 U.S.C. 303] (a) From the sums appropriated therefor, the Secretary of the Treasury shall[6] pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1960—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarter as old-age assistance under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 3⅓37 of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of $37 multiplied by the total number of recipients of old-age assistance for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received old-age assistance in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as old-age assistance in the form of medical or any other type of remedial care); plus

(B) the larger of the following:

(i)(I) the Federal percentage (as defined in section 1101(a)(8)) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of recipients of old-age assistance for such month, plus (II) 15 per centum of the total expended during such month as old-age assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month

[6] P.L. 93-647, § 3(e)(2), deleted "(subject to section 1130)", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975.

as exceeds the product of $15 multiplied by the total number of recipients of old-age assistance for such month, or

(ii)(I) the Federal medical percentage (as defined in section 6(c)) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of $52 multiplied by the total number of such recipients of old-age assistance for such month, or (b) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of $37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as old-age assistance under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B)(ii), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of such recipients of old-age assistance for such month;

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as old-age assistance under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of old-age assistance for such month; plus

(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of $45 multiplied by the total number of such recipients of old-age assistance for such month, or (II) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of $37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as old-age assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of $7.50 multiplied by the total number of such recipients of old-age assistance for such month;

(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 6(c)) of the total

amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and

(4) in the case of any State whose State plan approved under section 2 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan to help them attain or retain capability for self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c)(1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of assistance under the plan, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)[7] of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such assistance; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided,* That no funds authorized

[7] P.L. 93-647, § 5(a), added "(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)", (as applicable to Puerto Rico, the Virgin Islands, and Guam) effective with respect to payments for quarters commencing after September 30, 1975.

under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act[8] (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) under conditions which shall be prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act[9] or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (i) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(5) in the case of any State whose State plan approved under section 2 does not meet the requirements of subsection (c)(1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance with the provisions of such paragraph.[10]

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be

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[8] P.L. 93-112 (Rehabilitation Act of 1973), § 500(a), repealed the Vocational Rehabilitation Act, effective December 25, 1973, and deemed references to be to the Rehabilitation Act of 1973. For relevant material, see P.L. 93-112, §§ 101, 501, 601-613, in Vol. II, p. 1476.

[9] P.L. 93-112 (Rehabilitation Act of 1973), § 500(a), repealed the Vocational Rehabilitation Act, effective December 25, 1973, and deemed references to be to the Rehabilitation Act of 1973. For relevant material, see P.L. 93-112, in Vol. II, p. 1475.

[10] See P.L. 81-474, § 9, with respect to additional amounts payable by the Secretary of the Treasury to the States with respect to Navajo and Hopi Indians, in Vol. II, p. 1528.

expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary for such prior quarter: *Provided,* That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c)(1) In order for a State to qualify for payments under paragraph (4) of subsection (a), its State plan approved under section 2 must provide that the State agency shall make available to applicants for or recipients of old-age assistance under such State plan at least those services to help them attain or retain capability for self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) until he is satisfied that there will no longer be any such failure to

comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (5) of such subsection.

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

OPERATION OF STATE PLANS

SEC. 4. [42 U.S.C. 304] In the case of any State plan which has been approved under this title by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

[SEC. 5. Repealed.[10A]]

DEFINITIONS

SEC. 6. [42 U.S.C. 306] (a) For the purposes of this title, the term "old-age assistance" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 2 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need[11] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i)[12] need not include money payments to an individual who has been absent from such State for a period in

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[10A] P.L. 92-603, § 303(a), effective January 1, 1974.

The P.L. 92-603, § 303(b), repeal exception is deemed not applicable to § 5 because it was executed with expenditure of the appropriation for the fiscal year ending June 30, 1936, and never became applicable to Puerto Rico, Guam, or the Virgin Islands.

[11] As in original. Should be "needs".

[12] P.L. 92-603, § 409(a), inserted "(i)", and ", (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of assistance under such plan", effective October 30, 1972. This amendment has been executed as if it applies to § 6(a) as amended by P.L. 92-603, § 408(a) (instead of § 554(a), a number beyond those included in P.L. 92-603).

excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of assistance under such plan [12].

(b) For purposes of this title, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals sixty-five years of age or older who are not recipients of old-age assistance (except, for any month, for recipients of old-age assistance who are admitted to or discharged from a medical institution during such month) but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services;
(2) skilled nursing-home services;
(3) physicians' services;
(4) outpatient hospital or clinic services;
(5) home health care services;
(6) private duty nursing services;
(7) physical therapy and related services;
(8) dental services;
(9) laboratory and X-ray services;
(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices;
(11) diagnostic, screening, and preventive services; and
(12) any other medical care or remedial care recognized under State law;

except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution).

(c) For purposes of this title, the term "Federal medical percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (i) the Federal medical percentage shall in no case be less than 50 per centum or more than 80 per centum, and (ii) the Federal medical percentage for Puerto Rico, the Virgin Islands, and Guam shall be 50 per centum. The Federal medical percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1101(a)(8) (other than the proviso at the end thereof); except that the Secretary shall, as soon as possible after enactment of the Social Security Amendments of 1960 [13], determine and promulgate the Federal medical percentage for each State—

(1) for the period beginning October 1, 1960, and ending with the close of June 30, 1961, which promulgation shall be based

[13] September 13, 1960 (P.L. 86-778, 74 Stat. 924).

on the same data with respect to per capita income as the data used by the Secretary in promulgating the Federal percentage (under section 1101(a)(8)) for such State for the fiscal year ending June 30, 1961 (which promulgation of the Federal medical percentage shall be conclusive for such period), and

(2) for the period beginning July 1, 1961, and ending with the close of June 30, 1963, which promulgation shall be based on the same data with respect to per capita income as the data used by the Secretary in promulgating the Federal percentage (under section 1101(a)(8)) for such State for such period (which promulgation of the Federal medical percentage shall be conclusive for such period).

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS[1]

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[1] Title II of the Social Security Act is administered by the Social Security Administration, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). Title II appears in the United States Code as §§ 401–433, subchapter II, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title II are contained in chapter III, title 20, Code of Federal Regulations.

See P.L. 79–291 (International Organizations Immunity Act), with respect to international organizations, in Vol. II, p. 1276.

See P.L. 94–12, § 702, effective March 29, 1975, with respect to a special $50 payment made by the Treasury Department, in Vol. II, p. 1646.

See P.L. 95–30, § 406, effective May 23, 1977, with respect to termination of special $50 payments, in Vol. II, p. 1675.

See P.L. 94–566, § 503, with respect to preservation of medicaid eligibility for individuals who cease to be eligible for supplemental security income benefits on account of cost-of-living increases in social security benefits, in Vol. II, p. 1672.

See P.L. 95–608, §§ 201–204, with respect to Indian child and family programs, in Vol. II, p. 1705.

See P.L. 96–265, § 308, with respect to time limitations for decisions on benefit claims, in Vol. II, p. 1505.

See P.L. 95–265, § 505, with respect to authority for demonstration projects in Vol. II, p. 1506.

See P.L. 96–605, § 401, with respect to certain social security tax waiver exemptions, in Vol. II, p. 1745.

For sections of the Internal Revenue Code of 1954 cited in this title, see Vol. I, p. 687 and Vol. II, p. 1291.

[2] This table of contents does not appear in the law.

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FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND [3]

SECTION 201. [42 U.S.C. 401] (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1), and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year [4] ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 [5] (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code [5] which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and

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[3] See P.L. 95-250, § 201(19), with respect to trust fund contributions and § 204(b)(4), with respect to title XVIII ineligibility, in Vol. II, p. 1687.
See P.L. 96-223, § 102, with respect to revenues used for low-income energy assistance, in Vol. II, p. 1726.
See P.L. 96-265, § 312, with respect to the Secretary's report to Congress on the effect of certain amendments affecting claims for disability insurance benefits, in Vol. II, p. 1506.
See 14 U.S.C. 707(e)(3) with respect to the requirement for certification to the Secretary of Labor of an individual's insured status, in Vol. II, p. 1160.
[4] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of § 201(a) of the Act.
[5] See subtitle C, Internal Revenue Code of 1954, in Vol. I, p. 697.

before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code[5] with respect to wages (as defined in section 1426 of such Code[6]), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939[7] after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare[7A] on the basis of the records of wages established and maintained by such Secretary in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939[8], with respect to self-employment income (as defined in section 481 of such Code[9]), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to

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[6] See § 5121, Internal Revenue Code of 1954, in Vol. I, p. 701.
[7] See subtitle F, Internal Revenue Code of 1954, in Vol. II, p. 1337.
[7A] This is deemed to refer to the Secretary of Health and Human Services under section 509(a) of the Department of Education Organization Act (P.L. 96-88, 93 Stat. 695).
[8] See subtitle A, chapter 2, Internal Revenue Code of 1954, in Vol. I, p. 688.
[9] See § 1402, Internal Revenue Code of 1954, in Vol. I, p. 689.

the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection.[10]

(b) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1), and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year[10] thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported,[11] (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported,[11] (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported,[11 12] (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported,[12 13 14] (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported,[12 13 14] (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported,[12 13 14] (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1985, and so reported.[14 14A 15] (L) 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported,[16] and (M) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported,[16]

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[10] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of § 201(b) of the Act.

[11] P.L. 93-233, § 7(a), effective December 31, 1973, amended this subparagraph in its entirety. For this subparagraph as it formerly read, see Vol. II, p. 1754.

[12] P.L. 95-216, § 102(a)(1), effective with respect to remuneration paid or received, and taxable years beginning, after 1977, amended this subparagraph in its entirety. For this subparagraph as it formerly read, see Vol. II, p. 1793.

[13] P.L. 93-233, § 7(a), added this subparagraph, effective December 31, 1973.

[14] P.L. 96-403, § 1(a), effective with respect to remuneration paid, and taxable years beginning, after December 31, 1979, amended this subparagraph in its entirety. For this subparagraph as it formerly read, see Vol. II, p. 1833.

[14A] As in original. Should be a comma.

[15] P.L. 95-216, § 102(a)(1), added this subparagraph, effective with respect to remuneration paid or received, and taxable years beginning, after 1977.

[16] P.L. 96-403, § 1(a), effective with respect to remuneration paid, and taxable years beginning, after December 31, 1979, added this subparagraph.

which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2)(A) 3/8 of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974,[17] (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978,[17] (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979,[17 18] (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980,[18 19 20] (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981,[18 19 20] (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982,[18 19 20] (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1985,[20 21] (L) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1, 1990,[22] and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989,[22] which self-employment income shall be certified by the Secretary of

[17] P.L. 93-233, § 7(b), effective December 31, 1973, amended this subparagraph in its entirety. For this subchapter as it formerly read, see Vol. II, p. 1754.

[18] P.L. 95-216, § 102(a)(2), effective with respect to remuneration paid or received, and taxable years beginning, after 1977, amended this subparagraph in its entirety. For this subparagraph as it formerly read, see Vol. II, p. 1793.

[19] P.L. 93-233, § 7(b), added this subparagraph, effective December 31, 1973.

[20] P.L. 96-403, § 1(b), effective with respect to remuneration paid, and taxable years beginning, after December 31, 1979, amended this subparagraph in its entirety. For this subparagraph as it formerly read, see Vol. II, p. 1833.

[21] P.L. 95-216, § 102(a)(2), added this subparagraph, effective with respect to remuneration paid or received, and taxable years beginning, after 1977.

[22] P.L. 96-403, § 1(b), effective with respect to remuneration paid, and taxable years beginning, after December 31, 1979, added this subparagraph.

Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

(c) With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this title called the "Trust Funds") there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this title called the "Board of Trustees") which Board of Trustees shall be composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this title called the "Managing Trustee"). The Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Funds;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Funds during the preceding fiscal year[23] and on their expected operation and status during the next ensuing five fiscal years;

(3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the Trust Funds is unduly small;

(4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and

(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) above shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(d) It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original

[23] P.L. 94-274, § 204(7), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975, for the purpose of § 201(c) of the Act.

issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended [24], are hereby extended to authorize the issuance at par of public-debt obligation [24A] for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Any obligations acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, respectively.

(g)(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by him and the Secretary of Health, Education, and Welfare which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health, Education, and Welfare and the Treasury Department for the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939 [25], and chapters 2 and 21 of the Internal Revenue Code of 1954, less

(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this

[24] See 31 U.S.C. 752–754 for text of Second Liberty Bond Act, in Vol. II, p. 1195.
[24A] As in original. Should be "obligations".
[25] See Internal Revenue Code of 1954, in Vol. I, p. 687.

subsection) by the Secretary of Health, Education, and Welfare which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).[26]

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939[25], and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year[27] shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year the Secretary of Health, Education, and Welfare shall determine the portion of the costs, incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clauses[27A] (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is re-

[26] See P.L. 94-202, § 8(f), with respect to making the estimates required under this clause, in Vol. II, p. 1658.

[27] P.L. 94-271, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for the purpose of § 201(g)(1) of the Act.

[27A] As in original. Should be "clause".

sponsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.[28]

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939[29] and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939[30] and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.[31]

(h) Benefit payments required to be made under section 223, and benefit payments required to be made under subsection (b), (c), or (d) of section 202 to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to

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[28] P.L. 94-202, § 8(d)(1), amended § 201(g)(1) in its entirety, effective January 2, 1976. For paragraph (1) as it formerly read, see Vol. II, p. 1775.

[29] See subtitle C, § 3121, Internal Revenue Code of 1954, in Vol. I, p. 697.

[30] See subtitle F, Internal Revenue Code of 1954, in Vol. II, p. 1337.

[31] P.L. 94-202, § 8(d)(2), added paragraph (4), effective January 2, 1976.
See P.L. 94-202, §8(e), with respect to employment of assistants, in Vol. II, p. 1658.

disability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this title (other than section 226) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

(i)(1) The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health, Education, and Welfare, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

(2) Any such gift accepted pursuant to the authority granted in paragraph (1) of this subsection shall be deposited in—

(A) the specific trust fund designated by the donor or

(B) if the donor has not so designated, the Federal Old-Age and Survivors Insurance Trust Fund.

(j) There are authorized to be made available for expenditure, out of the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund (as determined appropriate by the Secretary), such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Secretary in connection with disability determinations under this title, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 210(i)) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this title. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations.[32]

(k) Expenditures made for experiments and demonstration projects under section 505(a) of the Social Security Disability Amendments of 1980[33] shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Secretary.[34]

OLD-AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS

Old-Age Insurance Benefits

SEC. 202. [42 U.S.C. 402] (a) Every individual who—

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[32] P.L. 96-265, § 310(a), added subsection (j), effective June 9, 1980.

[33] P.L. 96-265, approved June 9, 1980 (94 Stat. 441).
See P.L. 96-265, § 505(a), in Vol. II, p. 1506.

[34] P.L. 96-265, § 505(a)(5), added subsection (k), effective June 9, 1980.

(1) is a fully insured individual (as defined in section 214(a)),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained the age of 65,

shall be entitled to an old-age insurance benefit for each month, beginning with the first month after August 1950 in which such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w), such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 215(a)) for such month.

Wife's Insurance Benefits

(b)(1) The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month, beginning with the first month in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs—

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10[35] years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

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[35] P.L. 95-216, § 337(b), deleted "20" and substituted "10", effective with respect to monthly benefits payable for months after December 1978, and, for individuals not entitled for December 1978, only on the basis of applications filed on or after January 1, 1979.

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsection (q) and paragraph (4) of this subsection[36], such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (f) or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d),

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s)), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

(4)(A) The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 210.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[37]

Husband's Insurance Benefits

(c)(1) The husband (as defined in section 216(f)) of an individual entitled to old-age or disability insurance benefits, if such husband—

(A) has filed application for husband's insurance benefits,

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[36] P.L. 95–216, § 334(a)(1), inserted "and paragraph (4) of this subsection", effective with respect to benefits payable for December 1977 on the basis of applications filed in or after December 1977, except where benefits are based on earnings while in the service of the Federal government or any State or political subdivision.

See P.L. 95–216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[37] P.L. 95–216, §334(a)(2), added paragraph (4), effective with respect to benefits payable for months beginning with December 1977 on the basis of applications filed in or after December 1977, except where benefits are based on earnings while in the service of the Federal government or any State or political subdivision.

See P.L. 95–216, § 334(g), where government service is involved, in Vol. II, p. 1499.

(B) has attained age 62, and [38]

(C) [38] is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of his wife,

shall be entitled to a husband's insurance benefit for each month, beginning with the first month after August 1950 in which he becomes so entitled to such insurance benefits and ending with the month preceding the month in which any of the following occurs: he dies, his wife dies, they are divorced, or he becomes entitled to an old-age or disability insurance benefit, based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of his wife, or his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2)(A) The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such husband for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 210.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[39]

(3) Except as provided in subsection (q) and paragraph (2) of this subsection [40], such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife for such month.

Child's Insurance Benefits

(d)(1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

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[38] P.L. 95–216, § 334(b)(1), deleted subparagraph (C), and redesignated subparagraph (D) as subparagraph (C), effective with respect to benefits payable for months beginning with December 1977 on the basis of applications filed in or after December 1977, except where benefits are based on earnings while in the service of the Federal government or any State or political subdivision. For subparagraph (C) as it formerly read, see Vol. II, p. 1793.

See P.L. 95–216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[39] P.L. 95–216, § 334(b)(2), amended paragraph (2) in its entirety, effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved. For paragraph (2) as it formerly read, see Vol. II, p. 1794.

See P.L. 95–216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[40] P.L. 95–216, § 334(b)(3), inserted "and paragraph (2) of this subsection", effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95–216, § 334(g), where government service is involved, in Vol. II, p. 1499.

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d)) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22,

but only if he was not under a disability (as so defined) in such earlier month; or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22, ,[41] or, subject to section 223(e), the termination month ([41A] and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he en-

[41] As in original. Second comma should be deleted.

[41A] As in original. Should be comma in place of opening parenthesis.

gages or is determined able to engage in substantial gainful activity,[41B] or (if later) the earlier of—

(III)[42] the first month during no part of which he is a full-time student, or

(IV)[42] the month in which he attains the age of 22, but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) if, at such time, the child was living with or was receiving at least one-half of his support from such stepfather or stepmother.

[41B] P.L. 96-265, § 303(b)(1)(B)(ii), deleted "the third month following the month in which he ceases to be under such disability" and inserted ", or, subject to section 223(e), the termination month (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity," effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to such date.

[42] P.L. 96-265, § 303(b)(1)(B)(i), redesignated clauses (i) and (ii) as (III) and (IV), respectively, effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to such date.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 223(a), or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under section 223(a) or this subsection, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or this subsection unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full-time student or is under a disability (as defined in section 223(d)), and (ii) had not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time student or (ii) the month in which he attains the age of 22, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22.

(7) For the purposes of this subsection—

(A) A "full-time student" is an individual who is in full-time attendance as a student at an educational institution, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the institutions involved, except that no individual shall be considered a "full-time student" if he is paid by his employer while attending an educational institution at the request, or

pursuant to a requirement, of his employer. An individual shall not be considered a "full-time student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the date of the enactment of this paragraph[43]) which constituted a felony under applicable law.[44]

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time student during any period of nonattendance at an educational institution at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Secretary that he intends to continue to be in full-time attendance at an educational institution immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an educational institution immediately following such period.

(C) An "educational institution" is (i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a non-accredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(D) A child who attains age 22 at a time when he is a full-time student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a degree from a four-year college or university shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the educational institution (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

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[43] This sentence was added by P.L. 96-473, § 5(b), enacted October 19, 1980. This paragraph was added by P.L. 89-97, § 306(b)(3), enacted July 30, 1965.

[44] P.L. 96-473, § 5(b), added the preceding sentence, effective with respect to benefits payable for months beginning on or after October 1, 1980.

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D) (i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or the month in which such individual became entitled to disability insurance benefits, or (III) if he is an individual referred to in either subparagraph (A) or subparagraph (B) and the child is the grandchild of such individual or his or her spouse, for the year immediately before the month in which such child files his or her application for child's insurance benefits, and [45]

(iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 216(e) and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child

[45] P.L. 93-66, § 240(a), added subdivision (III), effective with respect to monthly benefits payable for months after July 1973 on the basis of applications filed in or after July 1973.

was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

Widow's Insurance Benefits

(e)(1) The widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (5),

(C)(i) has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) or section 223, or [46]

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained age 65, and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (6)) in which she becomes so entitled to such insurance benefits, or

[46] See P.L. 88-525 (Food Stamp Act of 1977), § 11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices, in Vol. II, p. 1426.

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount of such deceased individual, or, if she became entitled to such benefits before she attained age 60, ,[46A] subject to section 223(e), the termination month (unless she attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.[47]

(2)(A) Except as provided in subsection (q), paragraph (8)[48] of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following

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[46A] As in original. Second comma should be deleted.

[47] P.L. 96-265, § 303(b)(1)(C), deleted "the third month following the month in which her disability ceases (unless she attains age 65 on or before the last day of such third month)." and inserted ", subject to section 223(e), the termination month (unless she attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.", effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to such date.

[48] P.L. 95-216, § 334(c)(1), deleted "paragraph (4)" and substituted "paragraphs (4) and (8)", effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

P.L. 95-216, § 336(a)(1), deleted "paragraphs (4) and (8)" and substituted "paragraph (8)", effective only with respect to monthly benefits payable for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.

See P.L. 95-216, § 336(c)(2) and (d), with respect to the applicable savings clause in Vol. II, p. 1500.

sentence)[49] of such deceased individual. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 215(f)(5) or (6) and under section 215(i) as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w)[49A] the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w).[50]

(B) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q)) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q)) for such month if such individual were still living and section 215(f)(5) or (6) were applied, where applicable,[51] [52] and

(ii) 82½ percent of the primary insurance amount of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) If a widow, before attaining age 60, or a surviving divorced wife, marries [53]—

(A) an individual entitled to benefits under subsection (f) or (h) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such widow's or surviving divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is

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[49] P.L. 95–216, § 204(a), added "(as determined after application of the following sentence)", effective with respect to monthly benefits for months after May 1978.

[49A] As in original. There should be a closing parenthesis after "subsection (w)".

[50] P.L. 95–216, § 204(a), added the preceding sentence, effective with respect to monthly benefits for months after May 1978.

[51] P.L. 95–216, § 204(b), added "and section 215(f)(5) or (6) were applied, where applicable,", effective with respect to monthly benefits for months after May 1978.

[52] P.L. 96–473, § 6(a), deleted ",", effective October 19, 1980.

[53] P.L. 95–216, § 336(a)(2), deleted "In the case of a widow or surviving divorced wife who marries" and substituted "If a widow, before attaining age 60, or a surviving divorced wife, marries", effective only with respect to monthly benefits payable for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.

See P.L. 95–216, § 336(c)(2) and (d), with respect to the applicable savings clause, in Vol. II, p. 1500.

entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

(4) If a widow, after attaining age 60, marries, such marriage shall, for purposes of paragraph (1), be deemed not to have occurred.[54]

(5) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(6) The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—

(A) throughout which she has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which her application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (5) begins.

(7) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972[55], such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 215(i)(3)) or any increase in benefits made under or pursuant to section 215(i), including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.[56]

(8)(A) The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k), paragraph (2)(B), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political

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[54] P.L. 95-216, § 336(a)(3), amended paragraph (4) in its entirety, effective only with respect to monthly benefits payable for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979. For paragraph (4) as it formerly read, see Vol. II, p. 1794.

See P.L. 95-216, § 336(c)(2) and (d), with respect to the applicable savings clause, in Vol. II, p. 1500.

[55] See P.L. 92-603, § 102(g), in Vol. II, p. 1457.

[56] P.L. 93-233, § 1(f), added paragraph (7), effective December 31, 1973.

subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 210.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[57]

Widower's Insurance Benefits[58]

(f)(1) The widower (as defined in section 216(g)) of an individual who died a fully insured individual, if such widower—

(A) has not remarried,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (6),

(C) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) or section 223,

(D)[59] is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of his deceased wife,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E)[59] if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F)[59] if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (7)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled

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[57] P.L. 95-216, § 334(c)(2), added paragraph (8), effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[58] See P.L. 88-525 (Food Stamp Act of 1977), § 11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices, in Vol. II, p. 1426.

See P.L. 95-216, § 336(c)(2) and (d), with respect to the applicable savings clause, in Vol. II, p. .

[59] P.L. 95-216, § 334(d)(1), deleted subparagraph (D) and redesignated subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively, effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved. For subparagraph (D) as it formerly read, see Vol. II, p. 1794.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (6) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount of his deceased wife, or, if he became entitled to such benefits before he attained age 60, ,[59A] subject to section 223(e), the termination month (unless he attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.[60]

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q), paragraph (3)(B), and paragraph (5)) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 210.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly

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[59A] As in original. Second comma should be deleted.

[60] P.L. 96–265, § 303(b)(1)(D), deleted "the third month following the month in which his disability ceases (unless he attains age 65 on or before the last day of such third month)." and substituted ", subject to section 223(e), the termination month (unless he attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.", effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[61]

(3)(A) Except as provided in subsection (q), paragraph (2)[62] of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence)[63] of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 215(f)(5) or (6) and under section 215(i) as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w)) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w).[64]

(B) If the deceased wife (on the basis of whose wages and self-employment income a widower is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widower's insurance benefit of such widower for any month shall, if the amount of the widower's insurance benefit of such widower (as determined under subparagraph (A) and after application of subsection (q)) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased wife would have been entitled (after application of subsection (q)) for such month if such wife were still living and section 215(f)(5) or (6) were applied, where applicable,[65]; [65A] and

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[61] P.L. 95–216, § 334(d)(2), amended paragraph (2) in its entirety, effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved. For paragraph (2) as it formerly read, see Vol. II, p. 1794.

See P.L. 95–216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[62] P.L. 95–216, § 334(d)(3), deleted "paragraph (5)" and substituted "paragraphs (2) and (5)", effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95–216, § 334(g), where government service is involved, in Vol. II, p. 1499.

P.L. 95–216, § 336(b)(1), deleted "paragraphs (2) and (5)" and substituted "paragraph (2)", effective only with respect to monthly benefits payable for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.

See P.L. 95–216, § 336(c)(2) and (d), with respect to the applicable savings clause, in Vol. II, p. 1500.

[63] P.L. 95–216, § 204(c)(1), added "(as determined after application of the following sentence)", effective with respect to monthly benefits for months after May 1978.

[64] P.L. 95–216, § 204(c)(2), added the last sentence of subparagraph (A), effective with respect to monthly benefits for months after May 1978.

[65] P.L. 95–216, § 204(d), added "and section 215(f)(5) or (6) were applied, where applicable," after "living", effective with respect to monthly benefits for months after May 1978.

[65A] As in original. Comma or semicolon should be deleted.

(ii) 82½ percent of the primary insurance amount of such deceased wife;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(4) If a widower, before attaining age 60, remarries[66]—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such widower's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage.

(5) If a widower, after attaining age 60, marries, such marriage shall, for purposes of paragraph (1), be deemed not to have occurred.[67]

(6) The period referred to in paragraph (1)(B)(ii), in the case of any widower, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based, or

(B) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(7) The waiting period referred to in paragraph (1)(F)[68], in the case of any widower, is the earliest period of five consecutive calendar months—

(A) throughout which he has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which his application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (6) begins.

(8) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972[69], such benefits shall not

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[66] P.L. 95-216, § 336(b)(2), deleted "In the case of a widower who remarries" and substituted "If a widower, before attaining age 60, remarries", effective only with respect to monthly benefits payable for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.

See P.L. 95-216, § 336(c)(2) and (d), with respect to the applicable savings clause, in Vol. II, p. 1500.

[67] P.L. 95-216, § 336(b)(3), amended paragraph (5) in its entirety, effective only with respect to monthly benefits payable for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979. For paragraph (5) as it formerly read, see Vol. II, p. 1794.

See P.L. 95-216, § 336(c)(2) and (d), with respect to the applicable savings clause, in Vol. II, p. 1500.

[68] P.L. 95-216, § 334(d)(4)(A), deleted "(G)" and substituted "(F)", effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[69] See P.L. 92-603, § 102(g), in Vol. II, p. 1457.

be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 215(i)(3)) or any increase in benefits made under or pursuant to section 215(i), including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.[70]

Mother's Insurance Benefits[71]

(g)(1) The widow and every surviving divorced mother (as defined in section 216(d)) of an individual who died a fully or currently insured individual, if such widow or surviving divorced mother—

(A) is not married,

(B) is not entitled to a widow's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's insurance benefits, or was entitled to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died,[72]

(E) at the time of filing such application has in her care a child of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced mother—

(i) the child referred to in subparagraph (E) is her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s)) be entitled to a mother's insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such widow or surviving divorced mother becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes entitled to a widow's insurance benefit, she remarries, or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced mother, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced mother is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

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[70] P.L. 93-233, § 1(g), added paragraph (8), effective December 31, 1973.

[71] The Supreme Court in *Weinberger* v. *Wiesenfeld* [420 US 636; 95 S.Ct. 1225; March 19, 1975] held in part that the gender-based distinction that grants benefits based on the earnings of a covered deceased wife and mother only to the minor children and not to the widower, violates the right to equal protection secured by the Due Process Clause of the Fifth Amendment.

[72] See P.L. 88-525 (Food Stamp Act of 1977), § 11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices, in Vol. II, p. 1426.

(2) Except as provided in paragraph (4) of this subsection, such[73] mother's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a widow or surviving divorced mother who marries—

(A) an individual entitled to benefits under subsection (a), (f), or (h), or under section 223(a), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

the entitlement of such widow or surviving divorced mother to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under section 223(a) or subsection (d) of this section, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or subsection (d) of this section unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

(4)(A) The amount of a mother's insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k)) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day such individual was employed by such entity, such service did not constitute "employment" as defined in section 210.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[74]

Parent's Insurance Benefits

(h)(1) Every parent (as defined in this subsection) of an individual who died a fully insured individual if such parent—

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[73] P.L. 95-216, § 334(e)(1), deleted "Such" and substituted "Except as provided in paragraph (4) of this subsection, such", effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[74] P.L. 95-216, § 334(e)(2), added paragraph (4), effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

(A) has attained age 62,

(B)(i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such amount is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits,

shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).[75]

(2)(A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed,

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[75] See P.L. 88-525 (Food Stamp Act of 1977), § 11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices, in Vol. II, p. 1426.

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 203(a)) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (e), (f), or (g), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

Lump-Sum Death Payments

(i) Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount, or an amount equal to $255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Secretary to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) if all or part of the burial expenses of such insured individual which are incurred by or through a funeral home or funeral homes remains unpaid, to such funeral home or funeral homes to the extent of such unpaid expenses, but only if (A) any person who assumed the responsibility for the payment of all or any part of such burial expenses files an application, prior to the expiration of two years after the date of death of such insured individual, requesting that such payment be made to such funeral home or funeral homes, or (B) at least 90 days have elapsed after the date of death of such insured individual and prior to the expiration of such 90 days no person has assumed responsibility for the payment of any such burial expenses;

(2) if all of the burial expenses of such insured individual which were incurred by or through a funeral home or funeral homes have been paid (including payments made under clause

(1)), to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid such burial expenses;

(3) if the body of such insured individual is not available for burial but expenses were incurred with respect to such individual in connection with a memorial service, a memorial marker, a site for the marker, or any other item of a kind for which expenses are customarily incurred in connection with a death and such expenses have been paid, to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid such expenses; or

(4) if any part of the amount payable under this subsection remains after payments have been made pursuant to clauses (1), (2), and (3), to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid other expenses in connection with the burial of such insured individual, in the following order of priority: (A) expenses of opening and closing the grave of such insured individual, (B) expenses of providing the burial plot of such insured individual, and (C) any remaining expenses in connection with the burial of such insured individual.

No payment (except a payment authorized pursuant to clause (1)(A) of the preceding sentence) shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 210(l)(1) are applicable, and who is returned to any State or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

Application for Monthly Insurance Benefits

(j)(1) Subject to the limitations contained in paragraph (4), an[76] individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to—

(A) the end of the twelfth month immediately succeeding such month in any case where the individual (i) is filing application for a benefit under subsection (e) or (f), and satisfies paragraph (1)(B) of such subsection by reason of clause (ii) thereof, or (ii) is filing application for a benefit under subsection (b), (c), or (d) on the basis of the wages and self-employment income of a person entitled to disability insurance benefits, or

(B) the end of the sixth month immediately succeeding such month in any case where subparagraph (A) does not apply.[77]

Any benefit under this title for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Secretary has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).[78]

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) for any month prior to the month in which he or she files an

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[76] P.L. 95-216, § 332(a)(1), deleted "An" and substituted "Subject to the limitations contained in paragraph (4), an", effective with respect to benefits payable on applications filed on or after January 1, 1978.

[77] P.L. 96-499, § 1011(a), deleted "the end of the twelfth month immediately succeeding such month." and substituted "—" followed by subparagraphs (A) and (B), effective with respect to applications filed on or after March 1, 1981.

[78] P.L. 96-265, § 306(a), amended paragraph (2) in its entirety, effective with respect to applications filed after June 1980. For paragraph (2) as it formerly read, see Vol. II, p. 1827.

application for benefits under that subsection if the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q), the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed.

(B)(i) If the individual applying for retroactive benefits is applying for such benefits under subsection (a), and there are one or more other persons who would (except for subparagraph (A)) be entitled for any month, on the basis of the wages and self-employment income of such individual and because of such individual's entitlement to such retroactive benefits, to retroactive benefits under subsection (b), (c), or (d) not subject to reduction under subsection (q), then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 223(d)), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(iii) If the individual applying for retroactive benefits has excess earnings (as defined in section 203(f)) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.

(iv) As used in this subparagraph, the term "retroactive benefits" means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.[79]

Simultaneous Entitlement to Benefits

(k)(1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) hereof, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2)(A) Any child who under the preceding provisions of this section is entitled for any month to child's insurance benefits on the wages and self-employment income of more than one insured indi-

[79] P.L. 95-216, § 332(a)(2), added paragraph (4), effective with respect to benefits payable on applications filed on or after January 1, 1978.

vidual shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month. Such child's insurance benefits for such month shall be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, except that such child's insurance benefits for such month shall be the largest benefit to which such child could be entitled under subsection (d) (without the application of section 203(a)) or subsection (m) if entitlement to such benefit would not, with respect to any person, result in a benefit lower (after the application of section 203(a)) than the benefit which would be applicable if such child were entitled on the wages and self-employment income of the individual with the greatest primary insurance amount. Where more than one child is entitled to child's insurance benefits pursuant to the preceding provisions of this paragraph, each such child who is entitled on the wages and self-employment income of the same insured individuals shall be entitled on the wages and self-employment income of the same such insured individual.

(B) Any individual (other than an individual to whom subsection (e)(4) or (f)(5) applies) who, under the preceding provisions of this section and under the provisions of section 223, is entitled for any month to more than one monthly insurance benefit (other than old-age or disability insurance benefit) under this title shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph (B)) would otherwise be entitled for such months. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(4) or (f)(5) applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3)(A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q), subsection (e)(2) or (f)(3), and any reduction under section 203(a), shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction under such subsection (q)).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(4) or (f)(5) applies and to any other monthly insurance benefit under section 202 (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A), any reduction under subsection (q), and any reduction under section 203(a), shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 203(a).

(4) Any individual who, under this section and section 223, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this title shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

Entitlement to Survivor Benefits Under Railroad Retirement Act

(l) If any person would be entitled, upon filing application therefor to an annuity under section 2 of the Railroad Retirement Act of 1974[80], or to a lump-sum payment under section 6(b) of such Act[81], with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

Minimum Survivor's Benefit

(m)(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 215(a) or (d), as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1)) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual's benefit amount for that month, prior to reduction under subsection (k)(3), shall not be less than that provided by subparagraph (C)(i)(I) of section 215(a)(1) and increased under section 215(i) for months after May of the year in which the insured individual died as though such benefit were a primary insurance amount.[82]

(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f), such individual's benefit amount, after reduction under subsection (q)(1), shall be not less than—

(A) $84.50, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

(B) $84.50 reduced under subsection (q)(1) as if retirement age as specified in subsection (q)(6)(A)(ii) were age 62 instead of the age specified in subsection (q)(9), if his first month of entitlement to such benefit is before the month in which he attained age 62.

(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) for a month prior to any month after 1972 for which a general benefit increase under this title (as defined in section 215(i)(3)) or a benefit increase under section 215(i) becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such

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[80] P.L. 93-445, § 301(1), deleted "section 5 of the Railroad Retirement Act of 1937" and substituted "section 2 of the Railroad Retirement Act of 1974", effective October 16, 1974. See P.L. 75-162 (Railroad Retirement Act of 1974), in Vol. II, p. 1266.

[81] P.L. 93-445, § 301(2), deleted "subsection (f)(1) of such section", and substituted "section 6(b) of such Act", effective October 16, 1974.

[82] P.L. 95-216, § 205(a), amended paragraph (1) in its entirety, effective with respect to monthly benefits payable for months after December 1978 based on the wages and self-employment income of individuals who die after December 1978. For paragraph (1) as it formerly read, see Vol. II, p. 1795.

benefit increase, prior to the application of subsection (q)(1) pursuant to paragraph (2)(B) and subsection (q)(4).

Termination of Benefits Upon Deportation of Primary Beneficiary

(n)(1) If any individual is (after the date of enactment of this subsection [83]) deported under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act [84], then, notwithstanding any other provisions of this title—

(A) no monthly benefit under this section or section 223 shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Secretary is notified by the Attorney General that such individual has been so deported, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 203(b), (c), and (d) of this Act shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

(2) As soon as practicable after the deportation of any individual under any of the paragraphs of section 241(a) of the Immigration and Nationality Act [84] enumerated in paragraph (1) in this subsection, the Attorney General shall notify the Secretary of such deportation.

Application for Benefits by Survivors of Members and Former Members of the Uniformed Services

(o) In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h), upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 3005 of title 38, United States Code [85], shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

Extension of Period for Filing Proof of Support and Applications for Lump-Sum Death Payment

(p) In any case in which there is a failure—

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[83] September 1, 1954. (P.L. 83-761, § 107, 68 Stat. 1083)
[84] See P.L. 82-414 (66 Stat. 163), § 241, in Vol. II, p. 1285.
[85] See 38 U.S.C. 3005 in Vol. II, p. 1214.

(1) to file proof of support under[86] subparagraph (B) of subsection (h)(1), or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950[87], within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i), or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950[87], within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

Reduction of Benefit Amounts for Certain Beneficiaries

(q)(1) If the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

(A) 5/9 of 1 percent of such amount if such benefit is an old-age insurance benefit, 25/36 of 1 percent of such amount if such benefit is a wife's or husband's insurance benefit, or 19/40 of 1 percent of such amount if such benefit is a widow's or widower's insurance benefit, multiplied by—[87A]

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)(A)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age;

and in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit is a month before the month in which such widow or widower attains age 60, such benefit, reduced pursuant to the preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), shall be further reduced by—

(C) 43/240 of 1 percent of the amount of such benefit, multiplied by—[87A]

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[86] P.L. 95-216, § 334(d)(5), deleted "subparagraph (C) of subsection (c)(1), clause (i) or (ii) of subparagraph (D) of subsection (f) (1), or", effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

[87] P.L. 81-734 (64 Stat. 477), approved August 28, 1950.

[87A] So in original.

(D)(i) the number of months in the additional reduction period for such benefit (determined under paragraph (6)(B)), if such benefit is for a month before the month in which such individual attains age 62, or

(ii) if less, the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is for the month in which such individual attains age 62 or any month thereafter.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such months had such individual attained age 65 in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains age 65), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's, or husband's insurance benefit shall be reduced by the sum of—

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the sum of—

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's, husband's, widow's, or widower's insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

(E) If the first month for which an individual is entitled to an old-age insurance benefit (whether such first month occurs before, with, or after the month in which such individual attains the age of 65) is a month for which such individual is also (or would, but for subsection (e)(1) in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such old-age insurance benefit shall be reduced by whichever of the following is the larger:

(i) the amount by which (but for this subparagraph) such old-age insurance benefit would have been reduced under paragraph (1), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6)(A) ended with the month before the month in which she or he attained age 62 and (II) the amount by which such old-age insurance benefit would be reduced under paragraph (1) if it were equal to the excess of such old-age insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(F) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs with or after the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e)(1) in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such disability insurance benefit for each month shall be reduced by whichever of the following is larger:

(i) the amount by which (but for this subparagraph) such disability insurance benefit would have been reduced under paragraph (2), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6)(A) ended with the month before the month in which she or he attained age 62 and (II) the amount by which such disability insurance benefit would be reduced under paragraph (2) if it were equal to the excess of such disability insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(G) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs before the month in which such individual attains the age of 62) is a

month for which such individual is also (or would, but for subsection (e)(1) in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower, be) entitled to a widow's or widower's insurance benefit, then such disability insurance benefit for each month shall be reduced by the amount such widow's or widower's insurance benefit would be reduced under paragraphs (1) and (4) for such month as if the period specified in paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B)) ended with the month before the first month for which she or he most recently became entitled to a disability insurance benefit.

(H) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to a widow's or widower's insurance benefit is a month for which such individual is also entitled to an old-age insurance benefit to which such individual was first entitled for that month or[88] for a month before she or he became entitled to a widow's or widower's benefit, the reduction in such widow's or widower's insurance benefit shall be determined under paragraph (1).

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7)) for each month beginning with the month of such increase in the primary insurance amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased primary insurance amount had been in effect for and after the month for which the individual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).[89]

(5)(A) No wife's insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by her with the Secretary, in accordance with regulations prescribed by him, in which she elects to receive wife's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which she has in her care (individually or jointly with the person on whose wages and self-employment income her wife's insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 203(c)(2))—

(i) for the month in which it is filed and for any month thereafter, and

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[88] P.L. 95-216, § 331(c)(2), added "for that month or" after "first entitled", effective with respect to monthly benefits payable for months after December 1977.

[89] P.L. 95-216, § 331(a), amended in its entirety the text following subparagraph (B), effective with respect to monthly benefits payable for months after December 1977. For the text as it formerly read, see Vol. II, p. 1795.

(ii) for months, in the period designated by the woman filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If a woman does not have in her care a child described in subparagraph (A)(ii) in the first month for which she is entitled to a wife's insurance benefit, and if such first month is a month before the month in which she attains age 65, she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's insurance benefit for a month in which she has in her care a child of her deceased husband (or deceased former husband) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which she would have been entitled had she been entitled for such month to mother's insurance benefits on the basis of her deceased husband's (or deceased former husband's) wages and self-employment income.

(6) For the purposes of this subsection—

(A) the "reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(i) beginning—

(I) in the case of an old-age or husband's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit, or

(II) in the case of a wife's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(III) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(ii) ending with the last day of the month before the month in which such individual attains retirement age; and

(B) the "additional reduction period" for an individual's widow's, or widower's insurance benefit is the period—

(i) beginning with the first day of the first month for which such individual is entitled to such benefit, but only if such individual has not attained age 60 in such first month, and

(ii) ending with the last day of the month before the month in which such individual attains age 60.

(7) For purposes of this subsection the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6)(A) for such benefit, and the "additional adjusted reduction period" for an individual's, widow's, or widower's insurance benefit is the additional reduction period prescribed by paragraph (6)(B) for such benefit, excluding from each such period—

(A) any month in which such benefit was subject to deductions under section 203(b), 203(c)(1), 203(d)(1), or 222(b),

(B) in the case of wife's insurance benefits, any month in which she had in her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,[90]

(D) in the case of widow's insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which he[90A] attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 203(a) and after application of section 215(g). If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of $0.10, it shall be reduced to the next lower multiple of $0.10.

(9) For purposes of this subsection, the term "retirement age" means age 65.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period or an additional adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

(A) in the case of old-age, wife's, and husband's insurance benefits, by multiplying such amount by the ratio of (i) the

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[90] P.L. 95-216, § 331(c)(1), deleted "the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability," and substituted "of the occurrence of an event that terminated her or his entitlement to such benefits,", effective with respect to monthly benefits payable for months after December 1977.

[90A] As in original. Should be "he or she".

number of months in the adjusted reduction period to (ii) the number of months in the reduction period,

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent to (ii) the number of months in the reduction period multiplied by 19/40 of 1 percent, plus the number of months in the additional reduction period multiplied by 43/240 of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 65, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by 19/40 of 1 percent, plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent.[90B]

such determination being made in accordance with the provisions of paragraph (8).[91]

(11) When an individual is entitled to more than one monthly benefit under this title and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of subsection (k) (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of this paragraph shall operate in conjunction with paragraph (3).[91]

Presumed Filing of Application by Individuals Eligible for Old-Age Insurance Benefits and for Wife's or Husband's Insurance Benefits

(r)(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains age 65, and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) is a month before the month in which such individual attains age 65 and if such individual is eligible (but for section 202(k)(4)) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

[90B] As in original. Period should be a comma.

[91] P.L. 95-216, § 331(b), added paragraphs (10) and (11), effective with respect to monthly benefits payable for months after December 1977.

(A) in such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

Child Aged 18 or Over Attending School

(s)(1) For the purposes of subsections (b)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 203(c), a child who is entitled to child's insurance benefits under subsection (d) for any month, and who has attained the age of 18 but is not in such month under a disability (as defined in section 223(d)), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4), of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 223(d)) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) So[92] much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence of subsection (c) of section 203, subsection (f)(1)(C) of section 203, and subsections (b)(3)(B), (c)(6)(B), (f)(3)(B), and (g)(6)(B) of section 216 shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 223(d)).

Suspension of Benefits of Aliens Who Are Outside the United States

(t)(1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Secretary finds, on the basis of information furnished to him by the Attorney General or information which otherwise comes to his attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States

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[92] P.L. 95-216, § 334(d)(6), deleted "Subsections (c)(2)(B) and (f)(2)(B) of this section, so" and substituted "So", effective with respect to monthly benefits payable for months beginning December 1977, on the basis of applications filed in or after December 1977, except where government service is involved.

See P.L. 95-216, § 334(g), where government service is involved, in Vol. II, p. 1499.

until he has been in the United States for a period of thirty consecutive days.

(2) Paragraph (1) shall not apply to any individual who is a citizen of a foreign country which the Secretary finds has in effect a social insurance or pension system which is of general application in such country and under which—

(A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old-age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of the enactment of this subsection [93].

(4) Paragraph (1) shall not apply to any benefit for any month if—

(A) not less than forty of the quarters elapsing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 210(l)(2) and (3)) as a member of a uniformed service (as defined in section 210(m)), or (ii) as the result of a disease or injury which the Administrator of Veterans' Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 210(l)(2)), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 210(l)(3)), as a member of a uniformed service (as defined in section 210(m)), if the Administrator determines that such individual was discharged or released from the period of such active duty or inactive duty training under conditions other than dishonorable, and if the Administrator certifies to the Secretary his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act which was treated as employment covered by this Act pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act [94];

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[93] August 1, 1956 (P.L. 84-880, § 118(a), 70 Stat. 835, 856).

[94] P.L. 93-445, § 101, amended the Railroad Retirement Act of 1937 in its entirety, effective January 1, 1975. In general, § 2 of the 1974 Act replaces § 5 of the 1937 Act. See P.L. 75-162 (Railroad Retirement Act of 1974), § 2, in Vol. II, p. 1266.

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967[95] are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123)[96].

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1), of such benefit or any other benefit based on the wages and self-employment income of the individual on whose wages and self-employment income such monthly benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10), be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 203 shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Secretary such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Secretary to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Secretary in obtaining such other information as may be necessary to enable the Secretary to carry out the purposes of this subsection.

(9) No payments shall be made under part A of title XVIII with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223, for any month beginning after June 30, 1968, to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123)[97].

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[95] P.L. 90-248 (81 Stat. 821), approved January 2, 1968.
[96] See 31 U.S.C. 123, in Vol. II, p. 1187.
[97] See 31 U.S.C. 123, in Vol. II, p. 1187.

Conviction of Subversive Activities, Etc.

(u)(1) If any individual is convicted of any offense (committed after the date of the enactment of this subsection [98]) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code [99], or

(B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended [100],

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 223 is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of title XVIII for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year [101] in which such conviction occurs or in any prior calendar year [101], and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1), been imposed with respect to any individual, the Attorney General shall notify the Secretary of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

Waiver of Benefits

(v) Notwithstanding any other provisions of this title, in the case of any individual who files a waiver pursuant to section 1402(g)[102] of the Internal Revenue Code of 1954 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this title to him, no payments shall be made on his behalf under part A of title XVIII, and no benefits or other payments under this title shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver; except that, if thereafter such individual's tax exemption under such section 1402(g) [102] ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this title and part A of title XVIII to the extent based on his self-employment income for and after the first taxable year

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[98] August 1, 1956 (P.L. 84-880, § 121(a), 70 Stat. 838, 856).

[99] See 18 U.S.C. §§ 792-799, 18 U.S.C. §§ 2151-2157, and 18 U.S.C. §§ 2381-2391, in Vol. II, p. 1165.

[100] See P.L. 18-831, § 4, in Vol. II, p. 1282. P.L. 92-128, § 2(a), repealed §§ 112 and 113, effective September 25, 1971.

[101] P.L. 95-216, § 353(f)(1), deleted "quarter" and substituted "year", effective with respect to convictions after December 31, 1977.

[102] P.L. 95-600, § 703(j)(14)(A), deleted "(h)" and substituted "(g)", effective October 4, 1976.

in which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year.

Increase in Old-Age Insurance Benefit Amounts on Account of Delayed Retirement

(w)(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 215(a)(3) as in effect in December 1978 or section 215(a)(1)(C)(i)(II) as in effect thereafter[103]) which is payable without regard to this subsection to an individual[104] shall be increased by—

(A) 1/12 of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount,[105] multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained age 65 or (if later) December 1970 and prior to the month in which such individual attained age 72, and

(B) with respect to which—

(i) such individual was a fully insured individual (as defined in section 214(a)), and

(ii) such individual either was not entitled to an old-age insurance benefit or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 72 after 1972 shall be determined

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[103] P.L. 95-216, § 205(b)(1), inserted "as in effect in December 1978 or section 215(a)(1)(C)(i)(II) as in effect thereafter", effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

[104] P.L. 95-216, § 203(1), deleted "If the first month for which an old-age insurance benefit becomes payable to an individual is not earlier than the month in which such individual attains age 65 (or his benefit payable at such age is not reduced under subsection (q)), the amount of the old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 215(a)(3)) which is payable without regard to this subsection to such individual" and substituted "The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 215(a)(3)) which is payable without regard to this subsection to an individual", effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

[105] P.L. 95-216, § 203(2), inserted "or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount,", effective with respect to monthly benefits payable for months after December 1978, and with respect to lump-sum death payments, on deaths occurring after December 1978.

through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 203(a).

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 215(a) as in effect in December 1978, or section 215(a)(1)(C)(i)(II) as in effect thereafter,[106] and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit if his primary insurance amount were determined under section 215(a) (whether before, in, or after December 1978)[107] without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.[108]

REDUCTION OF INSURANCE BENEFITS

Maximum Benefits[109]

SEC. 203. [42 U.S.C. 403] (a)(1) In the case of an individual whose primary insurance amount has been computed or recomputed under section 215(a)(1) or (4), or section 215(d), as in effect after December 1978, the total monthly benefits to which beneficiaries may be entitled under section 202 or 223 for a month on the basis of the wages and self-employment income of such individual shall, except as provided by paragraphs (3) and (6)[110] (but prior to any increases resulting from the application of paragraph (2)(A)(ii)(III) of section 215(i)), be reduced as necessary so as not to exceed—

(A) 150 percent of such individual's primary insurance amount to the extent that it does not exceed the amount established with respect to this subparagraph by paragraph (2),

(B) 272 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (A) but does not exceed the amount established with respect to this subparagraph by paragraph (2),

(C) 134 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (B) but does not exceed the

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[106] P.L. 95-216, § 205(b)(2), inserted "as in effect in December 1978, or section 215(a)(1)(C)(i)(II) as in effect thereafter,", effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

[107] P.L. 95-216, § 205(b)(3), inserted "(whether before, in, or after December 1978)", effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

[108] P.L. 93-233, § 18(b), added paragraph (5), effective December 31, 1973.

[109] P.L. 95-216, § 202, amended subsection (a) in its entirety, effective with respect to monthly benefits for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978. For subsection (a) as it formerly read, see Vol. II, p. 1795.

[110] P.L. 96-265, § 101(a)(1), deleted "paragraph (3)" and substituted "paragraphs (3) and (6)", effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under §§ 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

amount established with respect to this subparagraph by paragraph (2), and

(D) 175 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (C).

Any such amount that is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10.

(2)(A) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in the calendar year 1979, the amounts established with respect to subparagraphs (A), (B), and (C) of paragraph (1) shall be $230, $332, and $433, respectively.

(B) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by subparagraph (A) of this paragraph and the quotient obtained under subparagraph (B)(ii) of section 215(a)(1), with such product being rounded in the manner prescribed by section 215(a)(1)(B)(iii).

(C) In each calendar year after 1978 the Secretary shall publish in the Federal Register, on or before November 1, the formula which (except as provided in section 215(i)(2)(D)) is to be applicable under this paragraph to individuals who become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the following calendar year.

(D) A year shall not be counted as the year of an individual's death or eligibility for purposes of this paragraph or paragraph (8)[111] in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefits to which he was entitled during such 12 months).

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 202(k)(2)(A)) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis[112] of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section

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[111] P.L. 96-265, § 101(b)(1), deleted "(7)" and substituted "(8)", effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under §§ 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

[112] P.L. 96-473, § 6(b)(1), deleted "bases" and substituted "basis", effective October 19, 1980.

215(a)(1) for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 230.

(B) When two or more persons were entitled (without the application of section 202(j)(1) and section 223(b)) to monthly benefits under section 202 or 223 for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—

(i) the amount determined under this subsection without regard to this subparagraph,

(ii) the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual's wages and self-employment income, or

(iii) if any persons are entitled to benefits on the basis of such wages and self-employment income for the month before the effective month (after September 1972) of a general benefit increase under this title (as defined in section 215(i)(3)) or a benefit increase under the provisions of section 215(i), an amount equal to the sum of amounts derived by multiplying the benefit amount determined under this title (excluding any part thereof determined under section 202(w)) for the month before such effective month (including this subsection, but without the application of section 222(b), section 202(q), and subsections (b), (c), and (d) of this section), for each such person for such month, by a percentage equal to the percentage of the increase provided under such benefit increase (with any such increased amount which is not a multiple of $0.10 being rounded to the next higher multiple of $0.10);

but in any such case (I) subparagraph (A) of this paragraph shall not be applied to such total of benefits after the application of clause (ii) or (iii), and (II) if section 202(k)(2)(A) was applicable in the case of any such benefits for a month, and ceases to apply for a month after such month, the provisions of clause (ii) or (iii) shall be applied, for and after the month in which section 202(k)(2)(A) ceases to apply, as though subparagraph (A) of this paragraph had not been applicable to such total of benefits for the last month for which clause (ii) or (iii) was applicable.

(C) When any of such individuals is entitled to monthly benefits as a divorced spouse under section 202(b) or (c) or as a surviving divorced spouse under section 202(e) or (f) for any month, the benefit to which he or she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 202 on the wages and self-employment income of such insured individual shall be determined as if no such divorced spouse or surviving divorced spouse were entitled to benefits for such month.

(4) In any case in which benefits are reduced pursuant to the preceding provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 222(b). Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

(5) Notwithstanding any other provision of law, when—

(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection are applicable to such monthly benefits, and

(B) such individual's primary insurance amount is increased for the following month under any provision of this title,

then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after the application of the other provisions of this subsection and section 202(q)) than the total of monthly benefits (after the application of the other provisions of this subsection and section 202(q)) payable on the basis of such wages and self-employment income for such particular month.

(6) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), and (5) (but subject to section 215(i)(2)(A)(ii)), the total monthly benefits to which beneficiaries may be entitled under sections 202 and 223 for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, whether or not such total benefits are otherwise subject to reduction under this subsection but after any reduction under this subsection which would otherwise be applicable, shall be, reduced or further reduced (before the application of section 224) to the smaller of—

(A) 85 percent of such individual's average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger), or

(B) 150 percent of such individual's primary insurance amount.[113]

(7)[114] In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or

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[113] P.L. 96-265, § 101(a)(3), added paragraph (6), effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under §§ 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

[114] P.L. 96-265, § 101(a)(2), redesignated paragraph (6) as paragraph (7), effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an

Continued

more insured individuals, one or more of which primary insurance amounts were determined under section 215(a) or 215(d) as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 215(a)(1) or (4), or section 215(d), as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 215(a)(1) for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit[115] base determined under section 230 for the year in which that month occurs.

(8)[116] Subject to paragraph (7)[116], this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 215(a) or (d), as in effect (without regard to the table contained therein) in December 1978, except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978.

(9)[117] When—

(A) one or more persons were entitled (without the application of section 202(j)(1)) to monthly benefits under section 202 for May 1978 on the basis of the wages and self-employment income of an individual,

(B) the benefit of at least one such person for June 1978 is increased by reason of the amendments made by section 204 of the Social Security Amendments of 1977[118]; and

(C) the total amount of benefits to which all such persons are entitled under such section 202 are reduced under the provisions of this subsection (or would be so reduced except for the first sentence of section 203(a)(4)),

then the amount of the benefit to which each such person is entitled for months after May 1978 shall be increased (after such reductions are made under this subsection) to the amount such benefits would have been if the benefit of the person or persons referred to in subparagraph (B) had not been so increased.[119]

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individual who first becomes eligible for benefits (determined under §§ 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

[115] P.L. 96-473, § 6(b)(2), deleted "benefits" and substituted "benefit", effective October 19, 1980.

[116] P.L. 96-265, § 101(a)(2), redesignated paragraph (7) as paragraph (8), effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under § 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

P.L. 96-265, § 101(b)(2), deleted "(6)" and substituted "(7)", effective as in the preceding sentence of this footnote.

[117] P.L. 96-265, § 101(a)(2), redesignated paragraph (8) as paragraph (9), effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under §§ 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

[118] P.L. 95-216, 91 Stat. 1509, approved December 20, 1977.

[119] P.L. 95-216, § 204(e), added this paragraph, effective with respect to monthly benefits for months after May 1978.

Deductions on Account of Work

(b) Deductions, in amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(1) such individual's benefit or benefits under section 202 for any month, and

(2) if such individual was entitled to old-age insurance benefits under section 202(a) for such month, the benefit or benefits of all other persons for such month under section 202 based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (1) and (2). If the excess earnings so charged are less than such total benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's insurance benefits, is married to an individual entitled to old-age insurance benefits under section 202(a), such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f), be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 202 for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f), only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f)—

(A) an individual shall be deemed to be entitled to payments under section 202 equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the penultimate sentence thereof; and

(B) if a deduction is made with respect to an individual's benefit or benefits under section 202 because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 222(b), such individual shall not be considered to be entitled to any benefits under such section 202 for such month.

Deductions on Account of Noncovered Work Outside the United States or Failure To Have Child in Care

(c) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 202 for any month—

(1) in which such individual is under the age of seventy [120] and on seven or more different calendar days of which he engaged in noncovered remunerative activity outside the United States; or

(2) in which such individual, if a wife under age sixty-five entitled to a wife's insurance benefits, did not have in her care (individually or jointly with her husband) a child of her husband entitled to a child's insurance benefit and such wife's insurance benefit for such month was not reduced under the provisions of section 202(q); or

(3) in which such individual, if a widow entitled to a mother's insurance benefit, did not have in her care a child of her deceased husband entitled to a child's insurance benefit; or

(4) in which such individual, if a surviving divorced mother entitled to a mother's insurance benefit, did not have in her care a child of her deceased former husband who (A) is her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of her deceased former husband.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 202(s) applies or an event specified in section 222(b) occurs with respect to such child. Subject to paragraph (3) of such section 202(s), no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's insurance benefits for any month in which the widow or surviving divorced wife is entitled and has not attained age 65 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 65 (but only if he became so entitled prior to attaining age 60).

Deductions From Dependents' Benefits on Account of Noncovered Work Outside the United States by Old-Age Insurance Beneficiary

(d)(1) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which such individual is under the age of seventy [120] and on seven or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance

[120] P.L. 95-216, § 302(a), deleted "seventy-two" and substituted "seventy", effective for taxable years ending after December 31, 1981.

benefit or benefits or mother's insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's insurance benefits is married to an individual who is entitled to old-age insurance benefits and on seven or more different calendar days of which such individual engaged in noncovered remunerative activity outside the United States.

Occurrence of More Than One Event

(e) If more than one of the events specified in subsections (c) and (d) and section 222(b) occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

Months to Which Earnings Are Charged

(f) For purposes of subsection (b)—

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons are entitled for such month under section 202 on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 202 on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 202(a) and other persons are entitled to benefits under section 202(b), (c), or (d) on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 202(s), no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this title, (B) in which such individual was age seventy [120] or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's insurance benefits and has not attained age 65 (but only if she became so entitled prior to attaining age 60) or widower's insurance benefits and has not attained age 65 (but only if he became so entitled prior to attaining age 60), (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of

more than the applicable [123] [124] exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 [125] that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 202 (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8) [126], or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 202(b) (but only by reason of having a child in her care within the meaning of paragraph (1)(B) of that subsection) or under section 202(d) or (g), if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this title for the month following the month during which such entitlement under section 202(b), (d), or (g) ended [127].

(2) As used in paragraph (1), the term "first month of such taxable year" means the earliest month in such year to which the charging of excess earnings described in such paragraph is not prohibited by the application of clauses, (A), (B), (C), (D), (E), and (F) [128] thereof.

(3) For purposes of paragraph (1) and subsection (h), an individual's excess earnings for a taxable year shall be 50 per centum of his earnings for such year in excess of the product of the applicable [129] [130] exempt amount as determined under paragraph (8), multiplied by the number of months in such year, except that, in determining an individual's excess earnings for the taxable year in which he attains age 70 [131], there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net

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[123] P.L. 93-66, § 202(a), deleted "$175" and substituted "$200", effective for taxable years beginning after December 31, 1973.

[124] P.L. 95-216, § 301(d), deleted "$200 or the" and substituted "the applicable", effective with respect to taxable years ending after December 1977.

[125] P.L. 96-473, § 4(a), added "after December 1977", effective with respect to monthly benefits payable for months after December 1977.

[126] P.L. 95-216, § 303(a), effective only with respect to monthly benefits payable for months after December 1977, added: ", if such month is in the taxable year in which occurs the first month that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 202 (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8)".

[127] P.L. 96-473, § 1(a)(1)(B), added subparagraph (F), effective with respect to monthly benefits payable for months after December 1977.

[128] P.L. 96-473, § 1(a)(2), deleted "and (E)" and substituted "(E), and (F)", effective with respect to monthly benefits payable for months after December 1977.

[129] P.L. 93-66, § 202(b), deleted "$175" and substituted "$200", effective with respect to taxable years beginning after December 31, 1973.

[130] P.L. 95-216, § 301(d), deleted "$200 or the" and substituted "the applicable", effective with respect to taxable years ending after December 1977.

[131] P.L. 95-216, § 302(b), deleted "72" and substituted "70", effective with respect to taxable years ending after December 31, 1981.

earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Secretary). The excess earnings as derived under the preceding sentence, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(4) For purposes of clause (E) of paragraph (1)—

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Secretary that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Secretary shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable [123] [124] exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Secretary that such individual did not render such services in such month for more than such amount.

(5)(A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be determined as provided in section 211, except that paragraphs (1), (4), and (5) of section 211(c) shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D), and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(9)[132] of the Internal Revenue Code of 1954) taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 209; and in making such computation services which do not constitute employment as defined in section 210, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment.

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[132] As in original. Should be "702(a)(8)". See redesignation made by P.L. 94-455, §1901(b)(1)(I)(i), 90 Stat. 1791.

(D) In the case of—

(i) an individual who has attained the age of 65 on or before the last day of the taxable year, and who shows to the satisfaction of the Secretary that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

(ii) an individual who has become entitled to insurance benefits under this title, other than benefits under section 223 or benefits payable under section 202(d) by reason of being under a disability, and who shows to the satisfaction of the Secretary that he or she is receiving, in a year after his or her initial year of entitlement to such benefits, any other income not attributable to services performed after the month in which he or she initially became entitled to such benefits,

there shall be excluded from gross income any such royalties or other income.[133] [134]

(6) For purposes of this subsection, wages (determined as provided in paragraph (5)(C)) which, according to reports received by the Secretary, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Secretary that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Secretary that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons are entitled under section 202 for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this title) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 202(k)(3), and prior to the application of section 203(a)) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the month of June following a cost-of-living computation quarter he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the

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[133] P.L. 96-473, § 3(a), amended subparagraph (D) in its entirety, effective with respect to taxable years ending after December 31, 1977, but only with respect to benefits payable for months after December 1977. For subparagraph (D) as it formerly read, see Vol. II, p. 1833.

[134] See P.L. 95-171, § 10(d), with respect to individuals who put sitters in touch with individuals wishing to employ them, in Vol. II, p. 1679.

calendar year after the calendar year [135] in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death during such year).[136] [137]

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be [138] whichever of the following is the larger—

(i) the corresponding [139] exempt amount which is [140] in effect with respect to months in the taxable year in which the determination under subparagraph (A) is [140] made, or

(ii) the product of the exempt amount described in clause (i) and the ratio of (I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made under subparagraph (A), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.[141] [142] [143]

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[135] P.L. 95-216, § 301(a), deleted "a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends after the calendar year" and substituted "the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year", effective with respect to taxable years ending after December 1977.

[136] P.L. 93-233, § 3(k)(1), amended subparagraph (A) in its entirety, effective December 31, 1973. For subparagraph (A) as it formerly read, see Vol. II, p. 1754.

See P.L. 93-233, § 3(i), with respect to the increase in benefits, in Vol. II, p. 1612.

[137] See P.L. 95-216, § 301(c)(2), with respect to exemption in 1977 through 1981 from notification regarding the increased exempt amount, in Vol. II, p. 1497.

[138] P.L. 95-216, § 301(b)(1), deleted "The exempt amount for each month of a particular taxable year shall be" and substituted "Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be", effective with respect to taxable years ending after December 1977.

[139] P.L. 95-216, § 301(b)(2), added "corresponding", effective with respect to taxable years ending after December 1977.

[140] P.L. 95-216, § 353(a)(1), deleted "was" and substituted "is", effective January 1, 1979.

[141] P.L. 95-216, § 353(a)(2), amended clause (ii) in its entirety, effective January 1, 1979. For clause (ii) as it formerly read, see Vol. II, p. 1796.

[142] Retirement test exempt amounts for persons under age 65 are:

Year	Amount		Federal Register Citation	Publication Date
	Monthly	Annual		
1977	$250	$3,000	41 FR 44876	Oct. 13, 1976.
1978	270	3,240	42 FR 57754	Nov. 4, 1977.
1979	290	3,480	43 FR 53504	Nov. 16, 1978.
1980	310	3,720	44 FR 62957	Nov. 1, 1979.
1981	340	4,080	45 FR 76253	Nov. 18, 1980.

[143] For "average of the total wages" figures, see Appendix B, in Vol. II, p. 1013.

Whenever the Secretary determines that an [144] exempt amount is to be increased in any year under this paragraph, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 215(i)(1)(A)) in such year [145] of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.[146]

(C) Notwithstanding the determination of a new exempt amount by the Secretary under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph (B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount [147] is enacted.[146]

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained age 65 before the close of taxable year involved—

(i) shall be $333.33⅓ for each month of any taxable year ending after 1977 and before 1979,

(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,

(iii) shall be $416.66⅔ for each month of any taxable year ending after 1979 and before 1981,

(iv) shall be $458.33⅓ for each month of any taxable year ending after 1980 and before 1982, and

(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.[146] [148]

Penalty for Failure to Report Certain Events

(g) Any individual in receipt of benefits subject to deduction under subsection (c), (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Secretary prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred,

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[144] P.L. 95-216, § 301(b)(3), deleted "the" and substituted "an", effective with respect to taxable years ending after December 1977.

[145] P.L. 93-233, § 3(k)(2), deleted "no later than August 15 of such year" and substituted "within 30 days after the close of the base quarter (as defined in section 215(i)(1)(A)) in such year", effective December 31, 1973.

[146] See P.L. 95-216, § 301(c)(2), with respect to 1977-1981 exemption from notification regarding the increased exempt amount, in Vol. II, p. 1497.

[147] P.L. 93-233, § 3(k)(3), deleted "or providing a general benefit increase under this title (as defined in section 215(i)(3))", effective December 31, 1973.

[148] P.L. 95-216, § 301(c)(1), added subparagraph (D), effective with respect to taxable years ending after December 1977.

shall suffer deductions in addition to those imposed under subsection (c) as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report. As used in this subsection, the term "period for which there is a failure to report" with respect to any individual means the period for which such individual received and accepted insurance benefits under section 202 without making a timely report and for which deductions are required under subsection (c).

Report of Earnings to Secretary

(h)(1)(A) If an individual is entitled to any monthly insurance benefit under section 202 during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f), in excess of the product of the applicable [123] [124] exempt amount as determined under subsection (f)(8) times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Secretary of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Secretary may by regulations prescribe. Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained age 70 [151], or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 [151] have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant a reasonable extension of time for making the report of earnings required in this paragraph if he finds that there is valid

[151] P.L. 95-216, § 302(c), deleted "the age of 72" and "age 72" and substituted "age 70", effective with respect to taxable years ending after December 31, 1981.

reason for a delay, but in no case may the period be extended more than three months.

(B) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this title on the basis of the same wages and self-employment income, files with the Secretary information showing that a benefit for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1), within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) by reason of his earnings for such year, he shall suffer additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202, except that if the deduction imposed under subsection (b) by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 202, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) but not less than $10;

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202;

(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 202 and for which deductions are imposed under subsection (b) by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.

(3) If the Secretary determines, on the basis of information obtained by or submitted to him, that it may reasonably be expected that an individual entitled to benefits under section 202 for any taxable year will suffer deductions imposed under subsection (b) by reason of his earnings for such year, the Secretary may, before the

close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Secretary may specify) of the benefits payable on the basis of such individual's wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Secretary has determined whether or not any deduction is imposed for such month under subsection (b). The Secretary is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Secretary may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Secretary such other information with respect to such earnings as the Secretary may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 202 for such year, the Secretary requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f)) for such taxable year or any other information with respect to such earnings which the Secretary may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual's benefits are subject to deductions under subsection (b) for each month in such taxable year (or only for such months thereof as the Secretary may specify) by reason of his earnings for such year.

Circumstances Under Which Deductions Not Required

(i) In the case of any individual, deductions by reason of the provisions of subsection (b), (c), (g), or (h) of this section, or the provisions of section 222(b), shall, notwithstanding such provisions, be made from the benefit to which such individual is entitled only to the extent that such deductions reduce the total amount which would otherwise be paid, on the basis of the same wages and self-employment income, to such individual and the other individuals living in the same household.

Attainment of Age Seventy [152]

(j) For the purposes of this section, an individual shall be considered as seventy [153] years of age during the entire month in which he attains such age.

Noncovered Remunerative Activity Outside the United States

(k) An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 210 and are

[152] P.L. 95-216, § 302(d), deleted "Seventy-two" and substituted "Seventy", effective with respect to taxable years ending after December 31, 1981.

[153] P.L. 95-216, § 302(a), deleted "seventy-two" and substituted "seventy", effective with respect to taxable years ending after December 31, 1981.

not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 211(a). When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term "United States" does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) and the term "trade or business" shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1954.

Good Cause for Failure To Make Reports Required

(l) The failure of an individual to make any report required by subsection (g) or (h)(1)(A) within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Secretary that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

OVERPAYMENTS AND UNDERPAYMENTS

SEC. 204. [42 U.S.C. 404] (a) Whenever the Secretary finds that more or less than the correct amount of payment has been made to any person under this title, proper adjustment or recovery shall be made, under regulations prescribed by the Secretary, as follows:

(1) With respect to payment to a person of more than the correct amount, the Secretary shall decrease any payment under this title to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this title payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall apply any combination of the foregoing. A payment made under this title on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 210(m)) on active duty (as defined in section 210(l)) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Secretary that such individual is alive.

(2) With respect to payment to a person of less than the correct amount, the Secretary shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d).

(b) In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience.

(c) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b), or where adjustment under subsection (a) is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) If an individual dies before any payment due him under this title is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this

title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representative of the estate of the deceased individual, if any.

(e) For payments which are adjusted by reason of payment of benefits under the supplemental security income program established by title XVI, see section 1127.[154]

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT [155]

SEC. 205. [42 U.S.C. 405](a) The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.[156]

(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based.[157] Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such deci-

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[154] P.L. 96-265, § 501(b), added subsection (e), effective with respect to payments of monthly insurance benefits under title II of the Act entitlement for which is determined on or after July 1, 1981.

[155] P.L. 94-202, legislative history (94th Cong., 1st Sess., House Report 94-679, dated November 20, 1975, pp. 3-5, and Senate Report 94-550, dated December 12, 1975, pp. 4-6), discusses applicability of 5 U.S.C. § 551 ff., popularly known as the Administrative Procedure Act, to Social Security Administration hearings.

P.L. 95-251, § 2(a), amended the Administrative Procedure Act by deleting "hearing examiner" and substituting "administrative law judge", effective March 27, 1978.

See P.L. 94-437, § 702, with respect to regulations applicable to Indians, in Vol. II, p. 1496.

See P.L. 90-321 (Consumer Credit Protection Act), § 913(2), with respect to electronic fund transfers, in Vol. II, p. 1585.

See P.L. 96-265, § 308, with respect to certain time limitations for decisions on benefit claims, in Vol. II, p. 1505.

[156] See P.L. 95-630, §§ 1101-1121, with respect to an individual's right to financial privacy, in Vol. II, p. 1712.

[157] P.L. 96-265, § 305(a), added the preceding sentence, effective with respect to decisions made on or after July 1, 1981.

sion is received by [158] the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

(c)(1) For the purposes of this subsection—

(A) The term "year" means a calendar year when used with respect to wages and a taxable year [159] when used with respect to self-employment income.

(B) The term "time limitation" means a period of three years, three months, and fifteen days.

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced mother, child, or parent, who survives such individual.

(D) The term "period" when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1954 or regulations thereunder (or on reports filed by a State under section 218(e) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.[160]

(2)(A) On the basis of information obtained by or submitted to the Secretary, and after such verification thereof as he deems necessary, the Secretary shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out his duties under subparagraph (A), the Secretary shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of

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[158] P.L. 94-202, § 4, deleted "such period after such decision as may be prescribed in regulations of the Secretary, except that the period so prescribed may not be less than six months after notice of such decision is mailed to" and inserted "sixty days after notice of such decision is received by", effective with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, after February 29, 1976.

[159] P.L. 95-216, § 353(f)(2)(A), deleted "(as defined in section 211(e))", effective January 1, 1978.

[160] P.L. 95-216, § 353(f)(2)(B), added subparagraph (D), effective January 1, 1978.

individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Secretary, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Secretary is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Secretary shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual.

(iii) In carrying out the requirements of this subparagraph, the Secretary shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including non-public [160A] school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after the date of

[160A] So in original.

the enactment of this subparagraph [161] be null, void, and of no effect.

(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of title IV of the Social Security Act.

(iv) For purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.[162]

(3) The Secretary's record shall be evidence for the purpose of proceedings before the Secretary or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.[163]

(4) Prior to the expiration of the time limitation following any year the Secretary may, if it is brought to his attention that any entry of wages or self-employment income in his records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in his records, as the case may be. After the expiration of the time limitation following any year—

(A) the Secretary's records (with changes, if any, made pursuant to paragraph (5)) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this title;

(B) the absence of an entry in the Secretary's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this title that no such alleged wages were paid to such individual in such period; and

(C) the absence of an entry in the Secretary's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this title that no such alleged self-employment income was derived by such individual in such year unless it is shown that

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[161] October 4, 1976 (P.L. 94-455, § 1211(b), 90 Stat. 1711).

[162] P.L. 94-455, § 1211(b), added subparagraph (C), effective October 4, 1976.

[163] See P.L. 93-490, § 5, with respect to a study of combining social security and income tax reporting and a report to Congress, in Vol. II, p. 1622.

he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Secretary shall include in his records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Secretary's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Secretary's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this title when they should have been credited under the Railroad Retirement Act, or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act when they should have been credited under this title;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform his records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939 [164], under chapter 2 or 21 of the Internal Revenue Code of 1954, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 218 or regulations of the Secretary thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 218, if such assessments are made within the period specified in subsection (q) of such section,

[164] See subtitle A, chapter 2, and subtitle C, Internal Revenue Code of 1954, in Vol. I, p. 688.

or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Secretary's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Secretary;

(H) to include wages paid during any period in such year to an individual by an employer if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period;

(I) to enter items which constitute remuneration for employment under subsection (o), such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [165]; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Secretary as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F)) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Secretary of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Secretary of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such periods, after any change or refusal of a request for a change of his records pursuant to this subsection, as the Secretary may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Secretary shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in his records as may be required by such findings and decision.

(8) Decisions of the Secretary under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g).

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[165] In general, § 7(b)(7) of the Railroad Retirement Act of 1974 replaces § 5(k)(3) of the Railroad Retirement Act of 1937. See P.L. 75–162 (Railroad Retirement Act of 1974), § 7(b)(7), in Vol. II, p. 1273.

(d) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this title, or relative to any other matter within his jurisdiction hereunder, the Secretary shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Secretary. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Secretary shall be served by anyone authorized by him (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue on [165A] order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

[(f) Repealed.[166]]

(g) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the

[165A] As in original. Should be "an".
[166] P.L. 91-452, § 236, approved October 18, 1970.

claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; [167] and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(h) The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under Section 24 of the Judicial Code of the United States [168] to recover on any claim arising under this title.

(i) Upon final decision of the Secretary, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Secretary shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Division of Disbursement of the Treasury Department, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Secretary (except that in the case of (A) an individual who will have completed ten years of service creditable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B)

[167] P.L. 96–265, § 307, deleted "The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary," and substituted "The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding;", effective June 9, 1980.

[168] As in original. Judicial Code of the United States repealed by P.L. 80–773, § 39. Probably should read "section 1331 or 1346 of title 28, United States Code." See 28 U.S.C. 1346 in Vol. II, p. 1176.

the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to any annuity under section 2 of the Railroad Retirement Act of 1974 [169], and (D) any other person entitled to benefits under section 202 of this Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provision of the Railroad Retirement Act of 1974) [170]: *Provided,* That where a review of the Secretary's decision is or may be sought under subsection (g) the Secretary may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.[171]

(j) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.[172]

(k) Any payment made after December 31, 1939, under conditions set forth in subsection (j), any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Secretary of incompetency prior to certification of payment, if otherwise valid under this title, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(l) The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health, Education, and Welfare designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of subsection (e).

[(m) Repealed.[172A]]

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[169] See P.L. 75-162 (Railroad Retirement Act of 1974), § 2, in Vol. II, p. 1266.

[170] P.L. 93-445, § 302(a), added "(except that in the case of (A) an individual who will have completed ten years of service creditable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974, and (D) any other person entitled to benefits under section 202 of this Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974)", effective only with respect to benefits payable to individuals who first become entitled to benefits under title II of the Act after 1974.

[171] See P.L. 90-321 (Consumer Credit Protection Act), § 913(2), with respect to electronic fund transfers, in Vol. II, p. 1585.

See P.L. 95-630, §§ 1100-1121, with respect to the right to financial privacy, in Vol. II, p. 1712.

[172] See P.L. 95-608, §§ 2-113, with respect to Indian child welfare, in Vol. II, p. 1700.

[172A] See section 202(j)(2) of this title.

(n) The Secretary may, in his discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 204(a) with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this title for such month.

Crediting of Compensation Under the Railroad Retirement Act

(o) If there is no person who would be entitled, upon application therefor, to any annuity under section 2 of the Railroad Retirement Act of 1974 [173], or to a lump-sum payment under section 6(b) of such Act [174], with respect to the death of an employee (as defined in such Act), then, notwithstanding section 210(a)(9) of this Act, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act [175] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 217 of this Act) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this title on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this title, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 [176] shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

Special Rules in Case of Federal Service

(p)(1) With respect to service included as employment under section 210 which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (l)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps

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[173] P.L. 93-445, § 303(1), deleted "section 5 of the Railroad Retirement Act of 1937" and substituted "section 2 of the Railroad Retirement Act of 1974", effective January 1, 1975. See P.L. 75-162 (Railroad Retirement Act of 1974), § 2, in Vol. II, p. 1266.

[174] P.L. 93-445, § 303(2), deleted "subsection (f)(1) of such section" and substituted "section 6(b) of such Act", effective January 1, 1975. See P.L. 75-162, § 6(b), in Vol. II, p. 1273.

[175] P.L. 93-445, § 303(3), deleted "section 4 of such Act" and substituted "section 3(i) of such Act", effective January 1, 1975. See P.L. 75-162 (Railroad Retirement Act of 1974), § 3(i), in Vol. II, p. 1271.

[176] P.L. 95-216, § 353(f)(2)(C), inserted "before 1978", effective January 1, 1978.

Act [177], to which the provisions of section 210(o) are applicable, the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 209, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 1420(e) [178] of the Internal Revenue Code and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Secretary, to make certification to him with respect to any matter determinable for the Secretary by such head or his agents under this subsection, which the Secretary finds necessary in administering this title.

(3) The provisions of paragraphs (1) and (2) shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation [179], at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Transportation [179] shall be deemed to be the head of such instrumentality.

Expedited Benefit Payments

(q)(1) The Secretary shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this title will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this title was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

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[177] See P.L. 87-293, §§ 5 and 6, in Vol. II, p. 1365.

[178] See § 3122 of the Internal Revenue Code of 1954, in Vol. I, p. 728.

[179] P.L. 95-600, § 703(j)(14)(B), deleted "the Treasury" and substituted "Transportation", effective October 4, 1976.

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Secretary (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Secretary has evidence that such allegation is true, whichever is later),

the Secretary shall, if he finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Secretary determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2)(A) is true, he may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 228 shall be treated as monthly insurance benefits payable under this title. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 223, or section 202 to a wife, husband, or child of an individual entitled to or applying for benefits under section 223, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

REPRESENTATION OF CLAIMANTS

SEC. 206. [42 U.S.C. 406] (a). The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Secretary, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to

represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Whenever the Secretary, in any claim before him for benefits under this title, makes a determination favorable to the claimant, he shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim. If as a result of such determination, such claimant is entitled to past-due benefits under this title, the Secretary shall, notwithstanding section 205(i), certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney's fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

(b)(1) Whenever a court renders a judgment favorable to a claimant under this title who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Secretary may, notwithstanding the provisions of section 205(i), certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

ASSIGNMENT

SEC. 207. [42 U.S.C. 407] The right of any person to any future payment under this title shall not be transferable or assignable, at

law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy [180], attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

PENALTIES

SEC. 208. [42 U.S.C. 408] Whoever—

(a) for the purpose of causing an increase in any payment authorized to be made under this title, or for the purpose of causing any payment to be made where no payment is authorized under this title, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939 [181], or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(1) whether wages were paid or received for employment (as said terms are defined in this title and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(2) whether net earnings from self-employment (as such term is defined in this title and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(3) whether a person entitled to benefits under this title had earnings in or for a particular period (as determined under section 203(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(b) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this title; or

(c) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this title; or

(d) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this title, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(e) having made application to receive payment under this title for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(f) willfully, knowingly, and with intent to deceive the Secretary as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to

[180] §§ 6331 and 6334 of the Internal Revenue Code of 1954, for the purpose of collecting unpaid taxes, give the Internal Revenue Service authority to levy against benefits payable; see Vol. II, p. 1351.

[181] See subtitle A, chapter 2, and subtitle C, Internal Revenue Code of 1954, in Vol. I, p. 688.

the Secretary with respect to any information required by the Secretary in connection with the establishment and maintenance of the records provided for in section 205(c)(2); or

(g) for the purpose of causing an increase in any payment authorized under this title (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this title (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for any other purpose [182]—

(1) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Secretary (in the exercise of his authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Secretary by him or by any other person; or

(2) with intent to deceive, falsely represents a number to be the social security account number assigned by the Secretary to him or to another person, when in fact such number is not the social security account number assigned by the Secretary to him or to such other person; or

(h) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States; [183]

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

DEFINITION OF WAGES [184]

SEC. 209. [42 U.S.C. 409] For the purposes of this title, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(a)(1) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(2) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

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[182] P.L. 94-455, § 1211(a), inserted ", or for any other purpose", effective October 4, 1976.
[183] P.L. 94-455, § 1211(d), added subsection (h), effective October 4, 1976.
[184] See P.L. 96-605, § 401, with respect to certain social security tax waiver exemptions, in Vol. II, p. 1745.

(3) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,800 with respect to employment has been paid to any individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(4) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(5) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(6) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973 is paid to such individual during such calendar year;

(7) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(8) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $13,200 [185] [186] with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(9) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 230) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

(b) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a

[185] P.L. 93-66, § 203(a)(1), deleted "$12,000" and substituted "$12,600", effective only with respect to remuneration paid after, and taxable years beginning after, 1973.

[186] P.L. 93-233, § 5(a)(1), deleted "$12,600" and substituted "$13,200", effective only with respect to remuneration paid after, and taxable years beginning after, 1973.

class or classes of his employees and their dependents), on account of (1) retirement, or (2) sickness or accident disability, or (3) medical or hospitalization expenses in connection with sickness or accident disability, or (4) death;

(c) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(d) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(e) Any payment made to, or on behalf of, an employee or his beneficiary (1) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 [187] at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954, unless such payment is made to an employee of the trust as remuneration for services rendered as such employees and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 [187] or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (3) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1954, or (4) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954 [187A]

(f) The payment by an employer (without deduction from the remuneration of the employee)—

(1) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1954, or

(2) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor; [188]

(g)(1) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(2) Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter

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[187] See §§ 401 and 501, Internal Revenue Code of 1954, in Vol. II, p. 1305.

[187A] See § 3121(a)(5)(D), Internal Revenue Code of 1954, in Vol. I, p. 701.

[188] P.L. 96-499, § 1141(a)(2), amended subsection (f) in its entirety, effective with respect to remuneration paid after December 31, 1980, except with respect to State and local governments. For State and local governments, see P.L. 96-499, § 1141(c)(2), in Vol. II, p. . For subsection (f) as it formerly read, see Vol. II, p. 1835.

by the employer to the employee for such service is less than $50. As used in this paragraph, the term "domestic service in a private home of the employer" does not include service described in section 210(f)(5);

(3) Cash remuneration paid by an employer in any calendar year [189] to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year [189] by the employer to the employee for such service is less than $100 [190]. As used in this paragraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in section 210(f)(5);

(h)(1) Remuneration paid in any medium other than cash for agricultural labor;

(2) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (A) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (B) the employee performs agricultural labor for the employer on twenty days or more during such year for cash remuneration computed on a time basis;

(i) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains age 62, if he did not work for the employer in the period for which such payment is made. As used in this subsection, the term "sick pay" includes remuneration for service in the employ of a State, a political subdivision (as defined in section 218(b)(2)) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness;

(j) Remuneration paid by an employer in any year [189] to an employee for service described in section 210(j)(3)(C) (relating to home workers), if the cash remuneration paid in such year [189] by the employer to the employee for such service is less than $100 [190];

(k) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1954;

(l)(1) Tips paid in any medium other than cash;

(2) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(m) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(1) upon or after the termination of an employee's employment relationship because of (A) death, (B) retirement for disability, or (C) retirement after attaining an age spec-

[189] P.L. 95-216, § 351(a)(1), deleted "quarter" and substituted "year", effective with respect to remuneration paid and services rendered after December 31, 1977.

[190] P.L. 95-216, § 351(a)(2), deleted "$50" and substituted "$100", effective with respect to remuneration paid and services rendered after December 31, 1977.

ified in the plan referred to in paragraph (2) or in a pension plan of the employer, and

(2) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(n) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(o) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(p) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1954 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100.[192A] [192B]

(p) [193] Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1954 (relating to amounts received under qualified group legal services plans); or [194]

(q) Any payments made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the Internal Revenue Code of 1954.[195]

For purposes of this title, in the case of domestic service described in subsection (g)(2), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this title, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the

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[192A] As in original. Period should be a semicolon.

[192B] P.L. 95-216, § 351(a)(3)(A), added subsection (p), effective with respect to remuneration paid and services rendered after December 31, 1977.

[193] As in original. Duplicate subsection designation.

[194] P.L. 95-472, § 3(c)(3), added this subsection (p), effective with respect to taxable years beginning after December 31, 1976.

[195] P.L. 95-600, § 164(b)(4), added subsection (q), effective with respect to taxable years beginning after December 31, 1978.

amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (g)(2).

For purposes of this title, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 210(l)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act [196].

For purposes of this title, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act,[197] to which the provisions of section 210(o) are applicable, (1) the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(l) of the Peace Corps Act [197], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

For purposes of this title, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954 or (if no statement including such tips is so furnished) at the time received.

For purposes of this title, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1954) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

DEFINITION OF EMPLOYMENT [198]

SEC. 210. [42 U.S.C. 410] For the purposes of this title—

Employment

(a) The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employ-

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[196] See 37 U.S.C. §§ 201, 203 and 1009, in Vol. II, p. 1201.
[197] See P.L. 87-293, Peace Corps Act, §§ 5 and 6, in Vol. II, p. 1365.
[198] See P.L. 95-171, § 10(d), with respect to situations in which individuals put sitters in touch with individuals wishing to employ them, in Vol. II, p. 1679.

ing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee (i) of an American employer (as defined in subsection (e)), or (ii) of a foreign subsidiary (as defined in section 3121(l) of the Internal Revenue Code of 1954) of a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954) during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of the Internal Revenue Code of 1954, with respect to such subsidiary; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended [199], or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) Service performed by an individual in the employ of his spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

[199] See P.L. 81-439, § 501 et seq., in Vol. II, p. 1278. This title V has been inactive since December 31, 1964.

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 of the Internal Revenue Code [200] by virtue of any provision of law which specifically refers to such section in granting such exemption; [201]

(6)(A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code [200] on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) service performed in the employ of a corporation which is wholly owned by the United States;

(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation [202], at installations of the Coast Guard for the comfort, pleasure, con-

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[200] As in original. Should refer to Internal Revenue Code of 1954. See § 3111 of the Internal Revenue Code of 1954, in Vol. I, p. 700.

[201] See P.L. 94-563, § 2, with respect to refund of taxes paid, in Vol. II, p. 1668.

[202] P.L. 95-600, § 703(j)(14)(C), deleted "the Treasury" and substituted "Transportation", effective October 4, 1976.

tentment, and mental and physical improvement of personnel of the Coast Guard;

(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) in the legislative branch;

(iii) in a penal institution of the United States by an inmate thereof;

(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code [203] (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code [203], does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 218,

(B) service which, under subsection (k), constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of

[203] See 5 U.S.C. §§ 5351 and 8331–8345, in Vol. II, p. 1134.

any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code [204] (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis, or

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply;

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1954 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954, which is exempt from income tax under section 501(a) of such Code, but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to section 3121(k) of the Internal Revenue Code of 1954 (or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k)) [205], is in effect if such service is performed by an employee—

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[204] See 5 U.S.C. 5351, in Vol. II, p. 1134.

[205] P.L. 94-563, § 1(a), inserted "(or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k))" in (B); "(or deemed to have been filed)" in (i), (ii), and (iii); and "(or is

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(i) whose signature appears on the list filed (or deemed to have been filed) [205] by such organization under such section 3121(k),

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a certificate referred to in clause (iii)) was filed (or deemed to have been filed) [205], or

(iii) who, after the calendar quarter in which the certificate was filed (or deemed to have been filed) [205] with respect to a group described in paragraph (1)(E) of such section 3121(k), became a member of such group,

except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in such paragraph (1)(E) with respect to which no certificate is (or is deemed to be) [205] in effect;

(9) Service performed by an individual as an employee or employee representative as defined in section 1532 of the Internal Revenue Code [206];

(10) [207] Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1954 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 218(c)(5) are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect

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deemed to be)" in (B); effective with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under § 3121(k)(4) or (5) of the Internal Revenue Code of 1954.

[206] As in original. Should refer to Internal Revenue Code of 1954. See § 3231 of the Internal Revenue Code of 1954, in Vol. I, p. 732.

[207] P.L. 95-216, § 351(a)(3)(B), deleted "(A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Internal Revenue Code, if the remuneration for such service is less than $50; (B)" and redesignated clauses (i) and (ii) as subparagraphs (A) and (B), respectively, effective with respect to remuneration paid and services rendered after December 31, 1977.

to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [208];

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any year [209] during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950 [210], as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section

[208] See P.L. 79-291, §§ 1 and 5(b), in Vol. II, p. 1276.

[209] P.L. 95-216, § 351(a)(1), deleted "quarter" and substituted "year", effective with respect to remuneration paid and services rendered after December 31, 1977.

[210] See P.L. 81-831, § 4, in Vol. II, p. 1282.

101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii) [211]);

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act [211], as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or,[211A]

(20) Service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.[212]

Included and Excluded Service

(b) If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a).

American Vessel

(c) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any

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[211] See P.L. 82-414 in Vol. II, p. 1283.

[211A] As in original. Comma should be deleted.

[212] P.L. 94-455, § 1207(e)(2)(A), added paragraph (20), effective with respect to services performed after December 31, 1971.

P.L. 95-600, § 701(z), effective October 4, 1976, changed that effective date by deleting "1971" and substituting "1954". See P.L. 94-455, § 1207(f)(4), with respect to an exception applicable when taxes were paid after 1972 on certain fishing, in Vol. II, p. 1663.

vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

American Aircraft

(d) The term "American aircraft" means an aircraft registered under the laws of the United States.

American Employer

(e) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

Agricultural Labor

(f) The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended [213], or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators pro-

[213] See Agricultural Marketing Act (P.L. 71-10), § 15(g), in Vol. II, p. 1265.

duced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year [214] in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

The provisions of subparagraphs (A) and (B) of paragraph (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

Farm

(g) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

State

(h) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

United States

(i) The term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Employee

(j) The term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or [215]

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by

[214] P.L. 95-216, § 351(a)(1), deleted "quarter" and substituted "year", effective with respect to remuneration paid and services rendered after December 31, 1977.

[215] See P.L. 96-605, § 402, with respect to an author or artist performing services under contract to a corporation, in Vol. II, p. 1747.

such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

Covered Transportation Service

(k)(1) Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such

part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this title, and some of such employees become employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

Service in the Uniformed Services

(l)(1) Except as provided in paragraph (4), the term "employment" shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) The term "active duty" means "active duty" as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act[216], except that it shall also include "active duty for training" as described in such section[216].

(3) The term "inactive duty training" means "inactive duty training" as described in such section 102 [216A].

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[216] P.L. 84-881 (70 Stat. 857), approved August 1, 1956; however, P.L. 85-857 (72 Stat. 1105), § 1, approved September 2, 1958, codified laws with respect to veterans in title 38 of the U.S. Code. For the current text, see 38 U.S.C. 101(21)-(23), in Vol. II p. 1207. References should be "paragraph (21) of section 101 of title 38, United States Code" and "paragraph (22) of such section".

[216A] See previous footnote. Reference should be "paragraph (23) of such section".

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 3(i) of the Railroad Retirement Act of 1974 [217]. The Railroad Retirement Board shall notify the Secretary of Health, Education, and Welfare [218], with respect to all such service which is so creditable.

(B) In any case where benefits under this title are already payable on the basis of such individual's wages and self-employment income at the time such notification (with respect to such individual) is received by the Secretary, the Secretary shall certify no further benefits for payment under this title on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Secretary prior to the end of the month in which he receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Secretary shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A), and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

Member of a Uniformed Service [219]

(m) The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act) [220], or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at

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[217] P.L. 93-445, § 311(1), deleted "section 4 of the Railroad Retirement Act of 1937" and substituted "section 3(i) of the Railroad Retirement Act of 1974", effective January 1, 1975. See P.L. 75-162 (Railroad Retirement Act of 1974), § 3(i), in Vol. II, p. 1271.

[218] P.L. 93-445, § 311(2), deleted ", as provided in section 4(p)(2) of that Act", effective January 1, 1975.

[219] See P.L. 95-202, § 401, with respect to Women's Air Forces Service Pilots, in Vol. II, p. 1679.

[220] P.L. 84-881 (70 Stat. 857), approved August 1, 1956; however, P.L. 85-857 (72 Stat. 1105), § 1, approved September 2, 1958, codified laws with respect to veterans in title 38 of the U.S. Code. Reference should be "section 101(27) of title 38, United States Code". For the current text, see 38 U.S.C. 101(27) in Vol. II, p. 1207.

the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or naval service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Universal Military Training and Service Act[221], has, been selected for active military or naval service;

and has been ordered or directed to proceed to such place. The term does not include a temporary member of the Coast Guard Reserve.

Crew Leader

(n) The term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

Peace Corps Volunteer Service

(o) The term "employment" shall, notwithstanding the provisions of subsection (a), include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [222].

SELF-EMPLOYMENT

SEC. 211. [42 U.S.C. 411] For the purposes of this title—

Net Earnings From Self-Employment

(a) The term "net earnings from self-employment" means the gross income, as computed under chapter 1 of the Internal Revenue Code [223], derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such

[221] Universal Military Training and Service Act (P.L. 80-759) has been amended. For the current text, see 50 U.S.C. App., §§ 454, 455, and 471, in Vol. II, p. 1222.

[222] See P.L. 87-293, §§ 5 and 6, in Vol. II, p. 1365.

[223] As in original; should refer to Internal Revenue Code of 1954. See Subtitle A of the Internal Revenue Code of 1954, in Vol. II, p. 1292.

chapter which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 183 of such code [224], from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) [225] in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) [225] with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest [226] are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under chapter 1 of the Internal Revenue Code [223] as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies to such gain or loss,[227] (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

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[224] As in original, should refer to Internal Revenue Code of 1954. See Subtitle A, § 702(a)(8), of the Internal Revenue Code of 1954, in Vol. II, p. 1324.

[225] P.L. 93-368, § 10(a), added "(as determined without regard to any activities of an agent of such owner or tenant)", effective with respect to taxable years beginning after December 31, 1973.

[226] P.L. 95-600, § 703(j)(14)(D), deleted "(other than interest described in section 35 of the Internal Revenue Code of 1954)", effective October 4, 1976.

[227] As in original. There should be "or" before "(C)".

(4) The deduction for net operating losses provided in section 23(s) of such code[228] shall not be allowed;

(5)[229] (A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1954;

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), section 911 (relating to earned income from sources without the United States) and section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954;

(8) The term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) of the Internal Revenue Code of 1954 shall be deemed not to include the Virgin Islands, Guam, or American Samoa;

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

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[228] As in original; should refer to section 172 of Internal Revenue Code of 1954, shown in Vol. II, p. 1300.

[229] Gender-based distinction contained in this paragraph has been held unconstitutional in *Hester v. Harris*, 631 F. 2d 53 (5th Cir. 1980), *Carrasco v. Secretary HEW*, 628 F.2d 624 (1st Cir. 1980), and *Becker v. Harris*, 493 F. Supp. 991 (ED Ca. 1980).

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(10) In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply; and

(11) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1954 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.[230]

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 210(f)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is not more than

[230] P.L. 95-216, § 313(a), added paragraph (11), effective with respect to taxable years beginning after December 31, 1977.

$2,400, his distributive share of income described in section 702(a)(9) [230A] of such Code derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(9) [230A] of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(9) [230A] derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g), or by a partnership of which an individual is a member on a regular basis as defined in subsection (g), but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which

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[230A] As in original. Should be "section 702(a)(8)", as redesignated by P.L. 94-455, § 1901(b)(1)(I)(i).

an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

Self-Employment Income

(b) The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) $9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and prior to 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and prior to 1975, (i) $13,200 [231] [232], minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 230) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purposes of this subsection, be considered to be a nonresident alien individual.

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[231] P.L. 93-66, § 203(a)(2), deleted "$12,000" and substituted "$12,600", effective with respect to remuneration paid, and taxable years beginning, after 1973.

[232] P.L. 93-233, § 5(a)(2), deleted "$12,600" and substituted "$13,200", effective with respect to remuneration paid, and taxable years beginning, after 1973.

Trade or Business [233]

(c) The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23 of the Internal Revenue Code [234], except that such term shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary pursuant to section 218;

(2) The performance of service by an individual as an employee, other than—

(A) service described in section 210(a)(14)(B) performed by an individual who has attained the age of eighteen,

(B) service described in section 210(a)(16),

(C) service described in section 210(a)(11), (12), or (15) performed in the United States by a citizen of the United States,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary pursuant to section 218, and

(F) service described in section 210(a)(20); [235]

(3) The performance of service by an individual as an employee or employee representative as defined in section 1532 of the Internal Revenue Code [236];

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; [237]

(5) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or [237]

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) [238] of the Internal Revenue Code of 1954 is effective with respect to him.

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[233] See P.L. 96-605, § 402, with respect to an author or artist performing services under contract to a corporation, in Vol. II, p. 1747.

[234] As in original. Should refer to section 162 of the Internal Revenue Code of 1954, shown in Vol. II, p. 1298.

[235] P.L. 94-455, § 1207(e)(2)(B), added subparagraph (F), effective with respect to taxable years ending after December 31, 1971.

P.L. 95-600, § 701(z), effective October 4, 1976, changed that effective date by deleting "1971" and substituting "1954".

See P.L. 94-455, § 1207(f)(4), with respect to an exception applicable when taxes were paid after 1972 on certain fishing, in Vol. II, p. 1663

[236] As in original. Should refer to section 3231 of the Internal Revenue Code of 1954, shown in Vol. I, p. 732.

[237] See P.L. 95-216, § 316 (a) and (b), with respect to revocation of exemption from coverage, in Vol. II, p. 1498.

[238] P.L. 95-600, § 703(j)(14)(E), deleted "(n)" and substituted "(g)", effective October 4, 1976.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him.

Partnership and Partner

(d) The term "partnership" and the term "partner" shall have the same meaning as when used in supplement F of chapter 1 of the Internal Revenue Code [239].

Taxable Year

(e) The term "taxable year" shall have the same meaning as when used in chapter 1 of the Internal Revenue Code [240]; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of chapter 1 of such code, in which case his taxable year for the purposes of this title shall be the same as his taxable year under such chapter 1 [240].

Partner's Taxable Year Ending as Result of Death

(f) In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interests.

Regular Basis

(g) An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

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[239] As in original. Should refer to Internal Revenue Code of 1954. See §§ 761 and 7701(a) of the Internal Revenue Code of 1954 in Vol. II, p. 1324.

[240] As in original. Should refer to the Internal Revenue Code of 1954. See § 7701(a)(23) of the Internal Revenue Code of 1954, in Vol. II, p. 1360.

CREDITING OF SELF-EMPLOYMENT INCOME TO CALENDAR YEARS [241]

SEC. 212. [42 U.S.C. 412] (a) For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

(b) For the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

QUARTER AND QUARTER OF COVERAGE

Definitions

SEC. 213. [42 U.S.C. 413] (a) For the purposes of this title—

(1) The term "quarter", and the term "calendar quarter", means [241A] a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term "quarter [242] of coverage" means—

(i) for calendar years before 1978, and subject to the provisions of subparagraph (B), a quarter in which an individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 212) with $100 or more of self-employment income; and

(ii) for calendar years after 1977, and subject to the provisions of subparagraph (B), each portion of the total of the wages paid and the self-employment income credited (pursuant to section 212) to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year (as determined under subsection (d))[243], with such quarter of coverage being assigned to a specific calendar quar-

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[241] P.L. 95-216, § 351(b), amended § 212 in its entirety, effective January 1, 1978. For § 212 as it formerly read, see Vol. II, p. 1797.

[241A] As in original.

[242] P.L. 96-473, § 6(c), deleted "quarters" and substituted "quarter", effective October 19, 1980.

[243] P.L. 95-216, § 352(a), deleted "$250" and substituted "the amount required for a quarter of coverage in that calendar year (as determined under subsection (d))", effective January 1, 1978.

ter in such calendar year only if necessary in the case of any individual who has attained age 62 or died or is under a disability and the requirements for insured status in subsection (a) or (b) of section 214, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 216(i) would not otherwise be met.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal to $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals $3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or $4,200 in the case of a taxable year ending after 1954 and before 1959, or $4,800 in the case of a taxable year ending after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965 and before 1968, or $7,800 in the case of a taxable year ending after 1967 and before 1972, or $9,000 in the case of a taxable year beginning after 1971 and before 1973, or $10,800 in the case of a taxable year beginning after 1972 and before 1974, or $13,200 in the case of a taxable year beginning after 1973 and before 1975, or an amount equal to the contribution and benefit base (as determined under section 230) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974 and before 1978, each quarter any part of which falls in such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1978, then, subject to clauses (i) and (v), (I) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200; (II) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than

$300; (III) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $300 but are less than $400; and (IV) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more;

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter;

(vi) not more than one quarter of coverage may be credited to a calendar quarter; and

(vii) no more than four quarters of coverage may be credited to any calendar year after 1977.

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 214, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 216(i) are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 214(a)(3) are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.[244]

Crediting of Wages Paid in 1937

(b) With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937; (A) if wages of not less than $100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than $100 were paid in any such period, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

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[244] P.L. 95–216, § 351(c), amended paragraph (2) in its entirety, effective January 1, 1978. For paragraph (2) as it formerly read, see Vol. II, p. 1797.

Alternative Method for Determining Quarters of Coverage With Respect to Wages in the Period From 1937 to 1950

(c) For purposes of section 214(a), an individual shall be deemed to have one quarter of coverage for each $400 of his total wages prior to 1951 (as defined in section 215(d)(1)(C)), except where—

(1) such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to him for periods after 1950, or

(2) such individual's elapsed years (for purposes of section 214 (a)(1)) are less than 7.

Amount Required for a Quarter of Coverage [245]

(d)(1) The amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in any year under subsection (a)(2)(A)(ii) shall be $250 in the calendar year 1978 and the amount determined under paragraph (2) of this subsection for years after 1978.

(2) The Secretary shall, on or before November 1 of 1978 and of every year thereafter, determine and publish in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding calendar year. The amount required for a quarter of coverage shall be the larger of—

(A) the amount in effect in the calendar year in which the determination under this subsection is made, or

(B) the product of the amount prescribed in paragraph (1) which is required for a quarter of coverage in 1978 and the ratio of the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which the determination under this paragraph is made to the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for 1976 (as published in the Federal Register in accordance with section 215(a)(1)(D)),

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.[246]

INSURED STATUS FOR PURPOSES OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS

SEC. 214. [42 U.S.C. 414] For the purposes of this title—

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[245] The following changes have been made in the quarter of coverage amount:
For 1979, $260 (43 FR 53504; November 16, 1978)
For 1980, $290 (44 FR 62957; November 1, 1979)
For 1981, $310 (45 FR 76252; November 18, 1980)

[246] P.L. 95-216, § 352(b), added subsection (d), effective January 1, 1978.

Fully Insured Individual

(a) The term "fully insured individual" means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before the year in which he died or (if earlier) the year in which he attained age 62, except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quarters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 216(i)).

Currently Insured Individual

(b) The term "currently insured individual" means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this title as in effect prior to the enactment of this section [247], or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage.

COMPUTATION OF PRIMARY INSURANCE AMOUNT

SEC. 215. [42 U.S.C. 415] For the purposes of this title—

Primary Insurance Amount

(a)(1)(A) The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of—

(i) 90 percent of the individual's average indexed monthly earnings (determined under subsection (b)) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

(ii) 32 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

(iii) 15 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii),

rounded in accordance with subsection (g), and thereafter increased as provided in subsection (i).

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[247] August 28, 1950 (P.L. 81-734, § 104(a)).

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible of[247A] such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

(ii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing—

(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the second calendar year preceding the calendar year for which the determination is made, by

(II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year 1977.[248]

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amounts[248A] so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than—

(I) the dollar amount set forth on the first line of column IV in the table of benefits contained in (or deemed to be contained in) this subsection as in effect in December 1978, rounded (if not a multiple of $1) to the next higher multiple of $1, or

(II) an amount equal to $11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this subdivision under subsection (i),

whichever is greater. No increase under subsection (i), except as provided in subsection (i)(2)(A), shall apply to the dollar amount specified in subdivision (I) of this clause.

(ii) For purposes of clause (i)(II), the term "years of coverage" with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 217, compensation under the Railroad Retirement Act of 1937 prior to 1951 which is creditable to such individual pursuant to this title, and wages deemed to be paid prior to 1951 to such individual under section 231) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii)) and in each of which he is credited with wages (including wages deemed to be paid to such individual under

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[247A] As in original. Should be "for".

[248] For "average of the total wages" figures, see Appendix B, in Vol. II, p. 1013.

[248A] As in original. Should be "amount".

scetion [248B] 217, compensation under the Railroad Retirement Act of 1937 or 1974 which is creditable to such individual pursuant to this title, and wages deemed to be paid to such individual under section 229) and self-employment income of not less than 25 percent of the maximum amount which, pursuant to subsection (e), may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if section 230 as in effect immediately prior to the enactment of the Social Security Amendments of 1977 [249] had remained in effect without change.

(D) In each calendar year after 1978 the Secretary shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the average of the total wages (as described in subparagraph (B)(ii)(I)) on which that formula is based. With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1950.[250]

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3)), and each increase provided under subsection (i)(2), that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual's disability (whether because of such individual's subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a

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[248B] As in original. Should be "section".

[249] December 20, 1977 (P.L. 95-216, 91 Stat. 1509).

[250] For "average of the total wages" figures, see Appendix B, in Vol. II, p. 1013. For the formula for computing benefits, see Appendix C, in Vol. II, p. 1014.

subsequent period of disability, or because of such individual's death), the primary insurance amount so computed may in no case be less than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month—

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i)(II) thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this title, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 216(i)(2)(C),

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i)(II) thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B)[250A] an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation[251] would be made the individual's primary insurance amount would be greater if computed or recomputed—

(i) under section 215(a) as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by section 215(d), in the case of an individual to whom such section applies.

In determining whether an individual's primary insurance amount would be greater if computed or recomputed as provided in subparagraph (B), (I) the table of benefits in effect in December 1978 shall be applied without regard to any increases in that table which may become effective (in accordance with subsection (i)(4)) for years

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[250A] Subparagraph (B) and clauses (i) and (ii) thereof are incorrectly indented in law.

[251] P.L. 96-473, § 6(d), deleted "recommendation" and substituted "recomputation", effective October 19, 1980.

after 1978 (subject to clause (iii) of subsection (i)(2)(A) but without regard to clauses (iv) and (v) thereof) and (II) such individual's average monthly wage shall be computed as provided by subsection (b)(4).

(5) For purposes of computing the primary insurance amount (after December 1978) of an individual to whom paragraph (1) does not apply (other than an individual described in paragraph (4)(B)), this section as in effect in December 1978 shall remain in effect, except that, effective for January 1979, the dollar amount specified in paragraph (3) of subsection (a) shall be increased to $11.50. The table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) for each year after 1978.[252]

Average Indexed Monthly Earnings; Average Monthly Wage [253]

(b)(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced—

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such individual's elapsed years (disregarding any resulting fractional part of a year), but not more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (ii) is living with a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such

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[252] P.L. 95-216, § 201(a), amended subsection (a) in its entirety, effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments for deaths occurring after December 1978. For subsection (a) as it formerly read, see Vol. II, p. 1798.

For the Table for Determining Primary Insurance Amount and Maximum Family Benefits applicable to monthly benefits beginning June 1979 (i.e., monthly benefit checks dated July 3, 1979) with respect to claims filed before 1979, see Appendix A, in Vol. II, p. 1003. P.L. 93-233, § 2(a), amended in its entirety the table in the former subsection (a), effective with respect to monthly benefits for months after May 1974, and with respect to lump-sum death payments, in the case of deaths occurring after May 1974. For the table as it formerly read, see Vol. II, p. 1754.

[253] P.L. 95-216, § 201(b), amended subsection (b) in its entirety, effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments, for deaths occurring after December 1978. For subsection (b) as it formerly read, see Vol. II, p. 1799.

individual's computation base years, but which is not disregarded pursuant to clause (ii) or to subparagraph (B) (in determining such individual's benefit computation years) by reason of the reduction in the number of such individual's elapsed years under clause (ii), the number by which such elapsed years are reduced under this subparagraph pursuant to clause (ii) shall be increased by one (up to a combined total not exceeding 3) for each such calendar year; except that (I) no calendar year shall be disregarded by reason of this sentence (in determining such individual's benefit computation years) unless the individual was living with such child substantially throughout the period in which the child was alive and under the age of 3 in such year and the individual had no earnings as described in section 203(f)(5) in such year, (II) the particular calendar years to be disregarded under this sentence (in determining such benefit computation years) shall be those years (not otherwise disregarded under clause (ii)) which, before the application of section 215(f), meet the conditions of subclause (I), and (III) this sentence shall apply only to the extent that its application would not result in a lower primary insurance amount. The number of an individual's benefit computation years as determined under this subparagraph shall in no case be less than 2.[254]

(B) For purposes of this subsection with respect to any individual—

(i) the term "benefit computation years" means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term "computation base years" means the calendar years after 1950 and before—

(I) in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 202(j)(1) or otherwise) the first month of that entitlement; or

(II) in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of his death;

except that such term excludes any calendar year entirely included in a period of disability; and

(iii) the term "number of elapsed years" means (except as otherwise provided by section 104(j)(2) of the Social Security Amendments of 1972[255]) the number of calendar years after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained

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[254] P.L. 96–265, § 102(a), amended subparagraph (A) in its entirety, effective only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of the new subparagraph shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981. For subparagraph (A) as it formerly read, see Vol. II, p. 1827.

[255] See P.L. 92–603, § 104(j)(2), in Vol. II, p. 1458.

age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the second calendar year (after 1976) preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(ii)(I), or

(ii) is a year treated under subsection (f)(2)(C) as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under section 215(a) or 215(d) as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B), this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that "computation base years" include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

Application of Prior Provisions in Certain Cases [256]

(c) This subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979.

Primary Insurance Benefit Under 1939 Act

(d)(1) For purposes of column I of the table appearing in subsection (a), as that subsection was in effect in December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b), as in effect in December 1977 (but without regard to paragraph (4) thereof), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) (as so in effect)—

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after the year in which the individual attained age 20 and prior to 1951; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1949 shall be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual's wages credited to each of the years which were used in computing the amount of the divisor, except that—

(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the year immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the year immediately preceding the earliest year used in computing the amount of the divisor and to each year consecutively preceding that year, with any remainder less than $3,000 being credited to the year immediately preceding the earliest year to which a full $3,000 increment was credited; and

(iv) no more than $42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936 and prior to 1951.[257]

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[256] P.L. 95–216, § 201(c), amended subsection (c) in its entirety, effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments, for deaths occurring after December 1978. For subsection (c) as it formerly read, see Vol. II, p. 1800.

[257] P.L. 95–216, § 201(d)(1), amended the text which precedes paragraph (1)(C) in its entirety, effective with respect to monthly benefits of an individual who becomes eligible for an old-age or

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(C) For the purposes of subparagraph (B), "total wages prior to 1951" with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Secretary, (ii) wages deemed paid prior to 1951 to such individual under section 217, (iii) compensation under the Railroad Retirement Act of 1937 prior to 1951 creditable to him pursuant to this title, and (iv) wages deemed paid prior to 1951 to such individual under section 231.

(D) The individual's primary insurance benefit shall be 40 percent of the first $50 of his average monthly wage as computed under this subsection, plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).[258]

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;

(B) except as provided in paragraph (3), who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C)(i) who becomes entitled to benefits under section 202(a) or 223 after the date of the enactment of the Social Security Amendments of 1967 [259], or

(ii) who dies after such date without being entitled to benefits under section 202(a) or 223, or

(iii) whose primary insurance amount is required to be recomputed under section 215(f)(2) or (6), or section 231.

(3) The provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1967 [259] shall be applicable in the case of an individual[260] who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967 [261]) and section 220.

(4) The provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.[262]

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disability insurance benefit, or dies, after December 1977. For that text as it formerly read, see Vol. II, p. 1800.

[258] P.L. 95-216, § 201(d)(2), amended subparagraph (D) in its entirety, effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies, after December 1977. For subparagraph (D) as it formerly read, see Vol. II, p. 1800.

[259] January 2, 1968 (P.L. 90-248, 81 Stat. 821).

[260] P.L. 95-216, § 201(d)(3), deleted "— (A) who attained age 21 after 1936 and prior to 1951, or (B)", effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies, after December 1977.

[261] P.L. 90-248, 81 Stat. 821, approved January 2, 1968.

[262] P.L. 95-216, § 201(d)(4), added paragraph (4), effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies, after December 1977.

Certain Wages and Self-Employment Income Not To Be Counted

(e) For the purposes of subsections (b) and (d)—

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under section 215(a) as in effect prior to January 1979, average monthly wage,[263] there shall not be counted the excess over $3,600 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,800 in the case of any calendar year after 1958 and before 1966, the excess over $6,600 in the case of any calendar year after 1965 and before 1968, the excess over $7,800 in the case of any calendar year after 1967 and before 1972, the excess over $9,000 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200[264] in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A))[265] of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 212); and

(2) if an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under section 215(a) as in effect prior to January 1979, average monthly wage,[266] computed under subsection (b) or for the purposes of subsection (d) is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

Recomputation of Benefits

(f)(1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 217(b).

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or

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[263] P.L. 95–216, § 201(e)(1), deleted "average monthly wage" and substituted "average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under section 215(a) as in effect prior to January 1979, average monthly wage,", effective with respect to monthly benefits payable for months after December 1978 and lump-sum death payments payable on deaths occurring after December 1978.

[264] P.L. 93–66, § 203(a)(4), deleted "$12,000" and substituted "$12,600", effective with respect to calendar years after 1973. P.L. 93–233, § 5(a)(4), deleted "$12,600" and substituted "$13,200", effective with respect to calendar years after 1973.

[265] P.L. 95–216, § 201(e)(2), inserted "(before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A))", effective with respect to monthly benefits payable for months after December 1978 and lump-sum death payments payable on deaths occurring after December 1978.

[266] P.L. 95–216, § 201(e)(1), deleted "average monthly wage" and substituted "average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under section 215(a) as in effect prior to January 1979, average monthly wage,", effective with respect to monthly benefits payable for months after December 1978 and lump-sum death payments payable on deaths occurring after December 1978.

disability insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulation prescribe, recompute the individual's primary insurance account [266A] for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(1) to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) for purposes of clauses (i) and (ii) of subsection (a)(1)(A), the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B), would have been) used in the computation of such individual's primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual's primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii); and subsection (b)(3)(A) shall apply with respect to any such recomputation as it applied in the computation of such individual's primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.[267]

[(3) Repealed.[268]]

(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1.[269]

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained age 65, the Secretary shall recompute his primary insurance amount as provided in subsection (a) as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) Upon the death after 1967 of an individual entitled to benefits under section 202(a) or section 223, if any person is entitled to

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[266A] As in original. Should be "amount".

[267] P.L. 95–216, § 201(f)(1), amended paragraph (2) in its entirety, effective with respect to monthly benefits payable for months after December 1978 and lump-sum death payments for deaths occurring after December 1978. Subparagraph (B) has been executed as if it were preceded by quotation marks indicating Congressional intent to include it in the amendatory language. For paragraph (2) as it formerly read, see Vol. II, p. 1800.

[268] P.L. 95–216, § 201(f)(2), repealed paragraph (3), effective with respect to monthly benefits payable for months after December 1978 and lump-sum death payments for deaths occurring after December 1978. For paragraph (3) as it formerly read, see Vol. II, p. 1800.

[269] P.L. 95–216, § 201(f)(3), deleted "Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount.", effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Secretary shall recompute the decedent's primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 205(o) as remuneration for employment.

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) as in effect (without regard to the table in subsection (a)) in that month, and, where appropriate, under subsection (d) as in effect in December 1977. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter.[270]

(8) The Secretary shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) effective prior to January 1979, or would have been so computed if the dollar amount specified therein were $11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i)(II). Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i).[270]

Rounding of Benefits

(g) The amount of any primary insurance amount and the amount of any monthly benefit computed under section 202 or 223 which (after reduction under section 203(a) and deductions under section 203(b)) is not a multiple of $0.10 shall be raised to the next higher multiple of $0.10.

(h)(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, United States Code [271], remuneration paid for services to which the provisions of section 210(l)(1) of this Act are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this title, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Civil Service Commission [271A] certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5, United States Code [271], on the basis of such service.

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[270] P.L. 95-216, § 201(f)(4), added this paragraph, effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

[271] See 5 U.S.C. 8331—8345 in Vol. II, p. 1138.

[271A] These functions of the Civil Service Commission were transferred, effective January 1, 1979, to the Director of the Office of Personnel Management under section 102 of Reorganization Plan No. 2 of 1978, 5 U.S.C. 1101 note.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

Cost-of-Living Increases in Benefits [272]

(i)(1) For purposes of this subsection—

(A) the term "base quarter" means (i) the calendar quarter ending on March 31 in each year after 1974, or [273] (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this title;

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this title; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this title or if in such prior year such a general benefit increase becomes effective; and [274]

(C) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Secretary shall determine each year beginning with 1975 [275] (subject to the limitation in paragraph (1)(B) [275]) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Secretary determines that the base quarter in any year is a cost-of-living computation quarter, he shall, effective with the

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[272] See P.L. 93-66, § 201, effective July 9, 1973, with respect to the cost-of-living increase in social security benefits, in Vol. II, p. 1468.

See P.L. 93-233, § 3(i), with respect to the relationship between § 215(i) and §§ 203(f)(8) and 230(a) of this Act, in Vol. II, p. 1612.

[273] P.L. 93-233, § 3(a), amended clause (i) in its entirety, effective December 31, 1973. For clause (i) as it formerly read, see Vol. II, p. 1758.

[274] P.L. 93-233, § 3(b), deleted "in which a law has been enacted providing a general benefit increase under this title or in which such a benefit increase becomes effective; and" and substituted "if in the year prior to such year a law has been enacted providing a general benefit increase under this title or if in such prior year such a general benefit increase becomes effective; and", effective December 31, 1973.

[275] P.L. 93-233, § 3(c), deleted "1974" and substituted "1975" and deleted "and to subparagraph (E) of this paragraph", effective December 31, 1973.

month of June of that year as provided in subparagraph (B), increase—

(I) the benefit amount to which individuals are entitled for that month under section 227 or 228,

(II) the primary insurance amount of each other individual on which benefit entitlement is based under this title (including a primary insurance amount determined under subsection (a)(1)(C)(i)(I), but subject to the provisions of such subsection (a)(1)(C)(i) and clauses (iv) and (v) of this subparagraph), and

(III) the amount of total monthly benefits based on any primary insurance amount which is permitted under section 203 (and such total shall be increased, unless otherwise so increased under another provision of this title, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) as in effect (without regard to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 203 as in effect in December 1978, except as provided by section 203(a) (7) and (8) [276] as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B); and any amount so increased that is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i)(II) of subsection (a)(1) shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Secretary under the last sentence of subparagraph (D)).[277]

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this title and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I), subject to the provisions of subsec-

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[276] P.L. 96-265, § 101(b)(3), deleted "(6) and (7)" and substituted "(7) and (8)", effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under §§ 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

[277] P.L. 95-216, § 201(g)(1), amended clause (ii) in its entirety, effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978. For clause (ii) as it formerly read, see Vol. II, p. 1801.

tion (a)(1)(C)(i) and clauses (iv) and (v) of this subparagraph) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after May of that year.[278]

(iv)(I) In the case of an individual who is entitled to an old-age insurance benefit that is based on a primary insurance amount determined under subsection (a)(1)(C)(i)(I), such primary insurance amount shall not be increased under this subsection for any year before the year in which occurs the first month with respect to which there is payable to such individual all or some part of such benefit after application of the provisions of section 203 relating to deductions on account of work, or, if earlier, the year in which he attains age 65.

(II) In the case of an individual who is entitled to an insurance benefit under subsection (e) or (f) of section 202 that is based on a primary insurance amount determined under subsection (a)(1)(C)(i)(I), such primary insurance amount shall not be increased under this subsection for any year (except as provided in subdivision (III)) before the year in which occurs the first month with respect to which there is payable to such individual all or some part of such benefit after application of the provisions of section 203 relating to deductions on account of work, or, if earlier, the year in which he attains age 65.

(III) Any increase under this subsection which would otherwise be applied to a primary insurance amount except for the provisions of subdivision (II) of this clause, shall apply to such primary insurance amount if, during any month of the year in which the increase occurs, any individual is entitled to a benefit under subsection (d), (g), or (h) of section 202 based on such primary insurance amount, and such primary insurance amount is based upon the wages and self-employment income of a deceased individual.

(IV) No primary insurance amount determined under subsection (a)(1)(C)(i)(I) shall be increased under this subsection for any year during which no individual was entitled to any benefit based thereon under section 202 or 223 for any month of such year.

(V) In any case in which an increase under this subsection which occurs during any year applies to a primary insurance amount determined under subsection (a)(1)(C)(i)(I), and such an increase occurring in a later year does not apply to such primary insurance amount on account of the provisions of this clause, any such increase which occurs in a later year which is applicable to such primary insurance amount shall be based upon such primary insurance amount as previously increased under this subsection.[278]

(v) Notwithstanding clause (iv), no primary insurance amount shall be less than that provided under section 215(a)(1) without regard to subparagraph (C)(i)(I) thereof, as subsequently increased by applicable increases under this section.[278]

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply [279] in the

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[278] P.L. 95-216, § 201(g)(2), added this clause, effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

[279] P.L. 93-233, § 3(e), deleted "(subject to subparagraph (E))", effective December 31, 1973.

case of monthly benefits under this title for months after May [280] of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after May [280] of such calendar year.

(C)(i) Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.

(ii) Whenever the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter [281], indicating the amount of the benefit increase to be provided, his estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 230 and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(D) If the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall publish in the Federal Register within 45 days after the close of such quarter [282] a determination that a benefit increase is resultantly required and the percentage thereof. He shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i)(II) of subsection (a)(1) (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i)(II) under this subsection), or specified in subsection (a)(3) as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 203(a) except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)).[283] Notwithstanding the preceding sentence, such revision of maximum family benefits shall be subject to paragraph

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[280] P.L. 93-233, § 3(e), deleted "December" and substituted "May", effective December 31, 1973.

[281] P.L. 93-233, § 3(f), deleted "on or before August 15 of such calendar year" and substituted "within 30 days after the close of such quarter", effective December 31, 1973.

[282] P.L. 93-233, § 3(g), deleted "on or before November 1 of such calendar year" and substituted "within 45 days after the close of such quarter", effective December 31, 1973.

[283] P.L. 95-216, § 201(g)(3), deleted all that appeared after the first sentence and substituted: "He shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i)(II) of subsection (a)(1) (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i)(II) under this subsection), or specified in subsection (a)(3) as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 203(a) except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)).", effective with respect to monthly benefits for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978. For the portion of subparagraph (D) as it formerly read, see Vol. II, p. 1801.

(6) of section 203(a) (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980 [284]).[285] [286]

(3) As used in this subsection, the term "general benefit increase under this title" means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this title are based.

(4) This subsection as in effect in December 1978 shall continue to apply to subsections (a) and (d), as then in effect, for purposes of computing the primary insurance amount of an individual to whom subsection (a), as in effect after December 1978, does not apply (including an individual to whom subsection (a) does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)). For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a), as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect.[287] [288]

OTHER DEFINITIONS

SEC. 216. [42 U.S.C. 416] For the purposes of this title—

[(a) Repealed.[289]]

Wife

(b) The term "wife" means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity

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[284] P.L. 96-265, 94 Stat. 441, approved June 9, 1980.

[285] P.L. 96-265, § 101(b)(4), added the preceding sentence, effective with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under §§ 215(a)(3)(B) and 215(a)(2)(A) of the Act, as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.

[286] P.L. 93-233, § 3(h), deleted subparagraph (E), effective December 31, 1973. For subparagraph (E) as it formerly read, see Vol. II, p. 1758.

[287] See P.L. 95-588, § 306, with respect to the requirement for simultaneous publication by Veterans Administration of annual income limitations, in Vol. II, p. 1503.

[288] P.L. 95-216, § 201(g)(4), added paragraph (4), effective with respect to monthly benefits for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

[289] P.L. 87-64, § 102(c)(1), effective with respect to monthly benefits for months beginning after July 1961, based on applications filed after February 1961, and with respect to lump-sum death payments in the case of deaths after July 31, 1961.

under section 2 of the Railroad Retirement Act of 1974 [290], as amended.

Widow

(c) The term "widow" (except when used in section 202(i)) means the surviving wife of an individual, but only if (1) she is the mother of his son or daughter, (2) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (3) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (4) she was married to him at the time both of them legally adopted a child under the age of eighteen, (5) she was married to him for a period of not less than nine months immediately prior to the day on which he died, or (6) in the month prior to the month of her marriage to him (A) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) she was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974 [290], as amended.

Divorced Wives; Divorce

(d)(1) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 [291] years immediately before the date the divorce became effective.

(2) The term "surviving divorced wife" means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 10 [291] years immediately before the date the divorce became effective.

(3) The term "surviving divorced mother" means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The terms "divorce" and "divorced" refer to a divorce a vinculo matrimonii.

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[290] P.L. 93-445, § 304, deleted "section 5 of the Railroad Retirement Act of 1937" and substituted "section 2 of the Railroad Retirement Act of 1974", effective January 1, 1975. See P.L. 75-162 (Railroad Retirement Act of 1974) in Vol. II, p. 1266.

[291] P.L. 95-216, § 337(a), deleted "20" and substituted "10", effective with respect to monthly benefits payable for months after December 1978, and for individuals not entitled to Divorced Wife's benefits for December 1978, only on the basis of applications filed on or after January 1, 1979.

Child

(e) The term "child" means (1) the child or legally adopted child of an individual, (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) there was no natural or adoptive parent (other than such a parent who was under a disability, as defined in section 223(d)) of such person living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was at the time of such individual's death living in such individual's household and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) the date of enactment of the Social Security Amendments of 1958 [292]; except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare organization which furnishes services or assistance for children. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h)(1)(B), would have been a valid marriage.

Husband

(f) The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately

[292] August 28, 1958 (P.L. 85-840, 72 Stat. 1013).

preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974 [293], as amended.

Widower

(g) The term "widower" (except when used in section 202(i)) means the surviving husband of an individual, but only if (1) he is the father of her son or daughter, (2) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (4) he was married to her at the time both of them legally adopted a child under the age of eighteen, (5) he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (6) in the month before the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974 [293], as amended.

Determination of Family Status

(h)(1)(A) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this title if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died. If such courts would not find that such applicant and such

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[293] P.L. 93-445, § 304, deleted "section 5 of the Railroad Retirement Act of 1937" and substituted "section 2 of the Railroad Retirement Act of 1974", effective January 1, 1975. See P.L. 75-162 (Railroad Retirement Act of 1974), in Vol. II, p. 1266.

insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

(B) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual, but it is established to the satisfaction of the Secretary that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application, then, for purposes of subparagraph (A) and subsections (b), (c), (f), and (g), such purported marriage shall be deemed to be a valid marriage. The provisions of the preceding sentence shall not apply (i) if another person is or has been entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii) if the Secretary determines, on the basis of information brought to his attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage. The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g) of section 202, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife, widow, husband, or widower of such insured individual but for this subparagraph, shall end with the month before the month (i) in which the Secretary certifies, pursuant to section 205(i), that another person is entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual, if such other person is (or is deemed to be) the wife, widow, husband, or widower of such insured individual under subparagraph (A), or (ii) if the applicant is entitled to a monthly benefit under subsection (b) or (c) of section 202, in which such applicant entered into a marriage, valid without regard to this subparagraph, with a person other than such insured individual. For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (i) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (ii) resulting from a defect in the procedure followed in connection with such purported marriage.

(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this title,

the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2), shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his son or daughter,

(II) has been decreed by a court to be the father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter,

and such acknowledgement, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained age 65, whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and was living with or contributing to the support of the applicant at the time such insured individual became entitled to benefits or attained age 65, whichever first occurred;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his son or daughter,

(II) has been decreed by a court to be the father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter,

and such acknowledgement, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and was living with or contributing to the support of that applicant at the time such period of disability began;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his son or daughter,

(II) had been decreed by a court to be the father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his son or daughter,

and such acknowledgement, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

Disability; Period of Disability

(i)(1) Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (3), (4), (5), and (6) [295] of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

[295] P.L. 96-473, § 5(a)(2), deleted "and (5)" and substituted "(5), and (6)", effective with respect to benefits payable for months beginning on or after October 1, 1980.

(2)(A) The term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 223 for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains the age of 65. In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains age 65, or (ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section.[296]

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after the month in which the Social Security Amendments of 1967 is enacted[297], such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Secretary finds in accordance with regulations prescribed by him that the failure of such individual to file an application for a disability determination within the time specified in subpara-

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[296] P.L. 96-265, § 303(b)(2)(B), deleted "(ii) the second month following the month in which the disability ceases." and substituted "(ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section.", effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

[297] January 1968 (P.L. 90-248, 81 Stat. 821, approved January 2, 1968).

graph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before the month in which the Social Security Amendments of 1967 is enacted [297, 297A]

(I) such application is filed not more than 12 months after the month in which the Social Security Amendments of 1967 is enacted,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before the month in which the Social Security Amendments of 1967 is enacted, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Secretary finds in accordance with regulations prescribed by him, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) [298] only if the applicant satisfies the requirements for a period of disability before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).[299] [300]

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for

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[297A] As in original.

[298] P.L. 96-265, § 306(b)(1), added "(and shall be deemed to have been filed on such first day)", effective with respect to applications filed after June 1980.

[299] P.L. 96-265, § 306(b)(2), added "and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).", effective with respect to applications filed after June 1980.

[300] P.L. 96-265, § 306(b)(3), deleted "If upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed on such first day.", effective with respect to applications filed after June 1980.

benefits under section 202(a) on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

[(4) Repealed. [301]]

Periods of Limitation Ending on Nonwork Days

(j) Where this title, any provision of another law of the United States (other than the Internal Revenue Code of 1954) relating to or changing the effect of this title, or any regulation issued by the Secretary pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this title or is necessary to establish or protect any rights under this title, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Secretary pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this title may (pursuant to section 202(j)(1) or 223(b)) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this title may (pursuant to section 202(j)(2) or 223(b)) be accepted as such.

Waiver of Nine-Month Requirement for Widow, Stepchild, or Widower in Case of Accidental Death or in Case of Serviceman Dying in Line of Duty, or in Case of Remarriage to the Same Individual

(k) The requirement in clause (5) of subsection (c) or clause (5) of subsection (g) that the surviving spouse of an individual have been married to such individual for a period of not less than nine

[301] Effective October 13, 1964 (P.L. 88-650, § 1(c)).

months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, if—

(1) his death—

(A) is accidental, or

(B) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 210(l)(2)),

unless the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months, or

(2)(A) the widow or widower of such individual had been previously married to such individual and subsequently divorced and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce; or

(B) the stepchild of such individual had been the stepchild of such individual during a previous marriage of such stepchild's parent to such individual which ended in divorce and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce;

except that paragraph (2) of this subsection shall not apply if the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1)(A) of this subsection, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

BENEFITS IN CASE OF VETERANS

SEC. 217. [42 U.S.C. 417] (a)(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3).

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(b)(1) Any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 215(c) as in effect in December 1978 [302]. Notwithstanding section 215(d) as in effect in December 1978 [302], the primary insurance benefit (for purposes of section 215(c) as in effect in December 1978 [302]) of such veteran

[302] P.L. 95-216, § 205(c), inserted "as in effect in December 1978", effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

shall be determined as provided in this title as in effect prior to the enactment of this section [303], except that the 1 per centum addition provided for in section 209(e)(2) of this Act as in effect prior to the enactment of this section [303] shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application;

(B) any pension or compensation is determined by the Veterans' Administration to be payable by it on the basis of the death of such veteran;

(C) the death of the veteran occurred while he was in the active military or naval service of the United States; or

(D) such veteran has been discharged or released from the active military or naval service of the United States subsequent to July 26, 1951.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to paragraph (1)(B) of this subsection unless he has been notified by the Veterans' Administration that pension or compensation is determined to be payable by the Veterans' Administration by reason of the death of such veteran. The Secretary of Health, Education, and Welfare shall thereupon report such decision to the Veterans' Administration. If the Veterans' Administration in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, it shall notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payment theretofore certified by the Secretary of Health, Education, and Welfare on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Veterans' Administration, shall (notwithstanding the provisions of section 3101 of title 38, United States Code [305]) be deemed to have been paid to him by such Administration on account of such accrued pension or compensation. No such payment certified by the Secretary of Health, Education, and Welfare, and no payment certified by him for any month prior to the first month for which any pension or compensation is paid by the Veterans' Administration shall be deemed by reason of this subsection to have been an erroneous payment.

(c) In the case of any World War II veteran to whom subsection (a) is applicable, proof of support required under section 202(h) may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, whichever is the later.

(d) For the purposes of this section—

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[303] August 28, 1950 (P.L. 81-734; 64 Stat. 477).

[305] See 38 U.S.C. 3101, in Vol. II, p. 1215.

(1) The term "World War II" means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term "World War II veteran" means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e)(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this title on the basis of the wages and self-employment income of any veteran (as defined in paragraph (4)), and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3). In the case of monthly benefits under this title for months after December 1956 (and any lump-sum death payment under this title with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 210(l)(1) are applicable, wages which would, but for the provisions of clause (B), be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are

based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard [306], Coast and Geodetic Survey [307] or Public Health Service [308].

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term "veteran" means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to January 1, 1957, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(f)(1) In any case where a World War II veteran (as defined in subsection (d)(2)) or a veteran (as defined in subsection (e)(4)) has died or shall hereafter die, and his widow or child is entitled under subchapter III of chapter 83 of title 5, United States Code [309], to an annuity in the computation of which his active military or naval service was included, clause (B) of subsection (a)(1) or clause (B) of subsection (e)(1) shall not operate (solely by reason of such annuity)

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[306] Department of Transportation.

[307] Functions of the Coast and Geodetic Survey have since been transferred to the Secretary of Commerce and vested in the National Oceanic and Atmospheric Administration (NOAA) under Reorganization Plan No. 4 of 1970, effective October 3, 1970.

[308] Department of Health and Human Services.

[309] See 5 U.S.C. 8331-8345, in Vol. II, p. 1138.

to make such subsection inapplicable in the case of any monthly benefit under section 202 which is based on his wages and self-employment income; except that no such widow or child shall be entitled under section 202 to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such widow or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Civil Service Commission [310] certifies to the Secretary of Health, Education, and Welfare that (by reason of such waiver) no further annuity will be paid to such widow or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a widow waives her right to receive such annuity such waiver shall constitute a waiver on her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the widow and all children, or, if there is no widow, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5, United States Code, based on such veteran's military or civilian service.

(g)(1) In September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, the Secretary shall determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning—

(A) with July 1, 1965, in the case of the first such determination, and

(B) with the beginning of the first fiscal year commencing after the determination in the case of all other such determinations,

and ending with the close of September 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of September 30, 2015, as he estimates they would otherwise be in at the close of that date if section 210 of this Act as in effect prior to the Social Security Act Amendments of 1950 [311], and this section, had not been enacted [312]. The rate of interest to be used in determining such amount shall be the rate determined under section 201(d) for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which the determinations in 1965, 1970, and 1975 are made and in the September preceding the October in which all other determinations are made.[313]

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[310] Functions transferred to the Director of the Office of Personnel Management. See footnote 271A, this title.

[311] August 28, 1950 (P.L. 81-734; 64 Stat. 477).

[312] P.L. 81-734 (Social Security Act Amendments of 1950), § 105, added § 217, effective September 1, 1950.

[313] P.L. 94-273, § 16, revised paragraph (1) in its entirety, effective April 21, 1976. For paragraph (1) as it formerly read, see Vol. II, p. 1776.

(2) There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund—

(A) for the fiscal year ending June 30, 1966, an amount equal to the amount determined under paragraph (1) in September 1965, and

(B) for each fiscal year in the period beginning with July 1, 1966, and ending with the close of September [314] 30, 2015, an amount equal to the annual installment for such fiscal year under the most recent determination under paragraph (1) which precedes such fiscal year.

(3) For the fiscal year ending September [314] 30, 2016, there is authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund such sums as the Secretary determines would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position in which they would have been at the close of September [314] 30, 2015, if section 210 of this Act as in effect prior to the Social Security Act Amendments of 1950 [311], and this section, had not been enacted.

(4) There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund annually, as benefits under this title and part A of title XVIII are paid after September [314] 30, 2015, such sums as the Secretary determines to be necessary to meet the additional costs, resulting from subsections (a), (b), and (e), of such benefits (including lump-sum death payments).

(h)(1) For the purposes of this section, any individual who the Secretary finds—

(A) served during World War II (as defined in subsection (d)(1)) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8, 1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the day of, and was domiciled in the United States on the day of, such entrance into such active service; and

(E)(i) was discharged or released from such service under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty, or

(ii) died while in such service,

shall be considered a World War II veteran (as defined in subsection (d)(2)) and such service shall be considered to have been performed in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 202(f) or (h) may be filed at any time prior to the expiration of two years after the date of such individual's death or the date of the enactment of this subsection [315], whichever is the later.

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[314] P.L. 94-273, § 2(23), deleted "June" and substituted "September", effective April 21, 1976.
[315] August 28, 1958 (P.L. 85-840, 72 Stat. 1013).

VOLUNTARY AGREEMENTS FOR COVERAGE OF STATE AND LOCAL EMPLOYEES [316]

Purpose of Agreement

SEC. 218. [42 U.S.C. 418] (a)(1) The Secretary of Health, Education, and Welfare shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 210(a), for the purposes of this title the term "employment" includes any service included under an agreement entered into under this section.

Definitions

(b) For the purposes of this section—

(1) The term "State" does not include the District of Columbia, Guam, or American Samoa.

(2) The term "political subdivision" includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term "employee" includes an officer of a State or political subdivision.

(4) The term "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term "coverage group" means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Persons employed under section 709 of title 32, United States Code [317], who elected under section 6 of the National Guard Technicians Act of 1968 [318] to remain covered by an employee retirement system

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[316] See P.L. 96-499, § 1141(c), with respect to exception applicable to payments made before January 1, 1984, in Vol. II, p. 1745.

[317] See 32 U.S.C. 709, in Vol. II, p. 1199.

[318] See P.L. 90-486, § 6, in Vol. II, p. 1448.

of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this Act, be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 205 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1624) [319] or section 14 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499n) [320], between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

Services Covered

(c)(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3).

(4) The Secretary of Health, Education, and Welfare shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3).

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[319] See P.L. 79-733, § 205, in Vol. II, p. 1277.
[320] See P.L. 71-420, § 14, in Vol. II, p. 1265.

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h).

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 210(k)),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section, and

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency.

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3)), whichever may be desired by the State.

(8) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified on or after January 1, 1968, to exclude service performed by election officials or election workers if the remuneration paid in a calendar year [321] for such service is less than $100 [321]. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last day of the calendar quarter [321A] in which the modification is mailed or delivered by other means to the Secretary.

Positions Covered By Retirement Systems

(d)(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the

[321] P.L. 95-216, § 353(b)(1), deleted "quarter" and substituted "year" and deleted "$50" and substituted "$100", effective with respect to remuneration paid after December 31, 1977.

[321A] As in original. This may be inconsistent with calendar "year" used in previous sentence.

date such agreement is made applicable to such coverage group, or (B) on the date of enactment of the succeeding paragraph of this subsection [322] (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of enactment of such succeeding paragraph [322], no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A)). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A)) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is hereby declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1), an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence;

[322] September 1, 1954 (P.L. 83-761, § 101(h)(2), 68 Stat. 1056).

except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this title to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this title has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B)).

(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this title to service in any policeman's or fireman's position.[323]

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c), and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions

[323] See § 218(k)(3) and § 218(p). With respect to West Virginia, see P.L. 94-202, § 6(a), in Vol. II, p. 1657. With respect to Illinois, see P.L. 95-216, § 318, in Vol. II, p. 1499.

concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of a State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (f) only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term "institutions of higher learning" includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Minnesota, Nevada, New Jersey,[324] New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after the date of enactment of this subparagraph [325], is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such

[324] P.L. 95-216, § 320, inserted "New Jersey,", effective December 20, 1977.
[325] See P.L. 84-880, § 104(e), enacted August 1, 1956, with respect to this sentence. See P.L. 85-840, § 315(a)(1), enacted August 28, 1958, with respect to this subparagraph.

members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7), modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part who desire coverage under the insurance system established under this title.

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8)), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Secretary prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsec-

tion (f)(1), any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under title III, there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions other than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Secretary of Health, Education, and Welfare that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) shall not be considered a member of the retirement system.

(8)(A) Notwithstanding paragraph (1), if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of agreements with the States named in subsection (p) and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

Payments and Reports by States [326]

(e)(1) Each agreement under this section shall provide—

(A) that the State will pay to the Secretary of the Treasury, within the thirty-day period immediately following the last day of each calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 if the services for which wages were paid in such month to employees covered by the agreement constituted employment as defined in section 3121 of such Code; and [327]

(B) that the State will comply with such regulations relating to payments and reports as the Secretary of Health, Education, and Welfare may prescribe to carry out the purposes of this section.

(2) Where—

(A) an individual in any calendar year performs services to which an agreement under this section is applicable (i) as the employee of two or more political subdivisions of a State or (ii) as the employee of a State and one or more political subdivisions of such State; and

(B) such State provides all of the funds for the payment of those amounts referred to in paragraph (1)(A) which are equivalent to the taxes imposed by section 3111 of the Internal Revenue Code of 1954 with respect to wages paid to such individual for such services; and

(C) the political subdivision or subdivisions involved do not reimburse such State for the payment of such amounts or, in the case of services described in subparagraph (A)(ii), for the payment of so much of such amounts as is attributable to employment by such subdivision or subdivisions;

then, notwithstanding paragraph (1), the agreement under this section with such State may provide (either in the original agreement or by a modification thereof) that the amounts referred to in

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[326] See P.L. 94-202, § 7, with respect to frequency and due dates for payments and reports, in Vol. II, p. 1658.

P.L. 96-265, § 503(c), provides that § 7 shall not be applicable to any regulation which becomes effective on or after July 1, 1980, and which is designed to carry out the purposes of § 218(e)(1)(A) as amended by P.L. 96-265, § 503(a).

[327] P.L. 96-265, § 503(a), amended subparagraph (A) in its entirety, effective with respect to the payment of taxes (referred to in the new subparagraph (A)) on account of wages paid on or after July 1, 1980. For subparagraph (A) as it formerly read, see Vol. II, p. 1827.

paragraph (1)(A) may be computed as though the wages paid to such individual for the services referred to in clause (A) of this paragraph were paid by one political subdivision for services performed in its employ; but the provisions of this paragraph shall be applicable only where such State complies with such regulations as the Secretary may prescribe to carry out the purposes of this paragraph. The preceding sentence shall be applicable with respect to wages paid after an effective date specified in such agreement or modification, but in no event with respect to wages paid before (i) January 1, 1957, in the case of an agreement or modification which is mailed or delivered by other means to the Secretary before January 1, 1962, or (ii) the first day of the year in which the agreement or modification is mailed or delivered by other means to the Secretary, in the case of an agreement or modification which is so mailed or delivered on or after January 1, 1962.

Effective Date of Agreement [328]

(f)(1) Except as provided in subsection (e)(2), any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is agreed to by the Secretary and the State.

(2) In the case of service performed by members of any coverage group—

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Secretary.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so re-

[328] See P.L. 94-202, § 6(b), with respect to West Virginia, in Vol. II, p. 1657.

quested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

Termination of Agreement

(g)(1) Upon giving at least two years' advance notice in writing to the Secretary of Health, Education, and Welfare, a State may terminate, effective at the end of a calendar year [329] specified in the notice, its agreement with the Secretary either—

(A) in its entirety, but only if the agreement has been in effect from its effective date for not less than five years prior to the receipt of such notice; or

(B) with respect to any coverage group designated by the State, but only if the agreement has been in effect with respect to such coverage group for not less than five years prior to the receipt of such notice.

(2) If the Secretary, after reasonable notice and opportunity for hearing to a State with whom he has entered into an agreement pursuant to this section, finds that the State has failed or is no longer legally able to comply substantially with any provision of such agreement or of this section, he shall notify such State that the agreement will be terminated in its entirety, or with respect to any one or more coverage groups designated by him, at such time, not later than two years from the date of such notice, as he deems appropriate, unless prior to such time he finds that there no longer is any such failure or that the cause for such legal inability has been removed.

(3) If any agreement entered into under this section is terminated in its entirety, the Secretary and the State may not again enter into an agreement pursuant to this section. If any such agreement is terminated with respect to any coverage group, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such coverage group.

Deposits in Trust Fund; Adjustments

(h)(1) All amounts received by the Secretary of the Treasury under an agreement made pursuant to this section shall be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of section 201, subsection (b)(1) of such section, and subsection (a)(1) of section 1817, respectively.

(2) If more or less than the correct amount due under an agreement made pursuant to this section is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be prescribed by regulations of the Secretary of Health, Education, and Welfare.

(3) If an overpayment cannot be adjusted under paragraph (2), the amount thereof and the time or times it is to be paid shall be certified by the Secretary of Health, Education, and Welfare to the Managing Trustee, and the Managing Trustee, through the Fiscal

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[329] P.L. 95-216, § 353(b)(2), deleted "quarter" and substituted "year", effective with respect to notices submitted by the States to the Secretary after December 20, 1977.

Service of the Treasury Department and prior to any action thereon by the General Accounting Office, shall make payment in accordance with such certification. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary of Health, Education, and Welfare.

Regulations [330]

(i) Regulations of the Secretary of Health, Education, and Welfare to carry out the purposes of this section shall be designed to make the requirements imposed on States pursuant to this section the same, so far as practicable, as those imposed on employers pursuant to this title and subchapter A or E of chapter 9 of the Internal Revenue Code [331].

Failure To Make Payments

(j) In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary of Health, Education, and Welfare may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this Act. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this Act. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1).

Instrumentalities of Two or More States

(k)(1) The Secretary of Health, Education, and Welfare may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if—

(A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after the date of enactment of this paragraph [332]) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such

[330] See P.L. 94-202, § 8(k), with respect to procedures in effect December 1, 1975, in Vol. II, p. 1658.

[331] As in original. Should refer to the Internal Revenue Code of 1954. See Subtitle A in Vol. I, p. 688, and Subtitles A and F in Vol. II, p. 1292.

[332] August 30, 1957 (P.L. 85-226, 71 Stat. 511).

system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this paragraph [332] or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this Act may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3). For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

Delegation of Functions

(l) The Secretary of Health, Education, and Welfare is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and pay-

ment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

Wisconsin Retirement Fund

(m)(1) Notwithstanding paragraph (1) of subsection (d), the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system [333].

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

Certain Positions No Longer Covered by Retirement Systems

(n) Notwithstanding subsection (d), an agreement with any State entered into under this section prior to the date of the enactment of this subsection [334] may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on such date of enactment), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of the enactment of this subsection [334], are no longer covered by a retirement system on the date such agreement is made applicable to such services.

Certain Employees of the State of Utah

(o) Notwithstanding the provisions of subsection (d), the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roose-

[333] P.L. 95-216, §321, added "or any successor system", effective December 20, 1977.
[334] September 1, 1954 (P.L. 83-761, 68 Stat. 1058).

velt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950.

Policemen and Firemen in Certain States

(p)(1) Any agreement with the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi,[335] Montana,[336] New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to the date of enactment of this subsection [337] may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), be modified pursuant to subsection (c)(4) to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after the date of the enactment of this subsection[337], but only upon compliance with the requirements of subsection (d)(3). For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this title to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.

Time Limitation on Assessments

(q)(1) Where a State is liable for an amount due under an agreement pursuant to this section, such State shall remain so liable until the Secretary is satisfied that the amount due has been paid to the Secretary of the Treasury.

(2) Notwithstanding paragraph (1), a State shall not be liable for an amount due under an agreement pursuant to this section, with

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[335] P.L. 95-216, § 319, inserted "Mississippi,", effective December 20, 1977.
[336] Priv. L. 93-107, § 2, inserted "Montana,", effective December 31, 1974.
[337] Enacted August 1, 1956 (P.L. 84-880, § 104(g), 70 Stat. 826).

respect to the wages paid to individuals, after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which such wages were paid, or

(B) three years after the date on which such amount became due, or

(C) three years, three months, and fifteen days after the year following the year in which this subsection is enacted [339],

unless prior to the expiration of such period the Secretary makes an assessment of the amount due.

(3) For purposes of this subsection and section 205(c), an assessment of an amount due is made when the Secretary mails or otherwise delivers to the State a notice stating the amount he has determined to be due under an agreement pursuant to this section and the basis for such determination.

(4) An assessment of an amount due made by the Secretary after the expiration of the period specified in paragraph (2) shall nevertheless be deemed to have been made within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this paragraph, of such period as so extended), the State and the Secretary agree in writing to an extension of such period (or extended period) and, subject to such conditions as may be agreed upon, the Secretary makes the assessment prior to the expiration of such extension; or

(B) within the 365 days immediately preceding the expiration of such period (or extended period) the State pays to the Secretary of the Treasury less than the correct amount due under an agreement pursuant to this section with respect to wages paid to individuals in a calendar year [340] as members of a coverage group, and the Secretary of Health, Education, and Welfare makes the assessment, adjusted to take into account the amount paid by the State, no later than the 365th day after the day the State made payment to the Secretary of the Treasury; but the Secretary of Health, Education, and Welfare, shall make such assessment only with respect to the wages paid to such individuals in such calendar year [340] as members of such coverage group; or

(C) pursuant to subparagraph (A) or (B) of section 205(c)(5) he includes in his records an entry with respect to wages for an individual, but only if such assessment is limited to the amount due with respect to such wages and is made within the period such entry could be made in such records under such subparagraph.

(5) If the Secretary allows a claim for a credit or refund of an overpayment by a State under an agreement pursuant to this section, with respect to wages paid or alleged to have been paid to an individual in a calendar year for services as a member of a coverage group, and if as a result of the facts on which such allowance is based there is an amount due from the State, with

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[339] Enacted September 13, 1960 (P.L. 86-778, § 102(f)(1), 74 Stat. 930). The date described in this subparagraph (C) is April 15, 1965.

[340] P.L. 95-216, § 353(b)(3), deleted "any calendar quarters" and substituted "a calendar year" and deleted "such calendar quarters" and substituted "such calendar year", effective with respect to remuneration paid after December 31, 1977.

respect to wages paid to such individual in such calendar year for services performed as a member of a coverage group, for which amount the State is not liable by reason of paragraph (2), then notwithstanding paragraph (2) the State shall be liable for such amount due if the Secretary makes an assessment of such amount due at the time of or prior to notification to the State of the allowance of such claim. For purposes of this paragraph and paragraph (6), interest as provided for in subsection (j) shall not be included in determining the amount due.

(6) The Secretary shall accept wage reports filed by a State under an agreement pursuant to this section or regulations of the Secretary thereunder, after the expiration of the period specified in paragraph (2) or such period as extended pursuant to paragraph (4), with respect to wages which are paid to individuals performing services as employees in a coverage group included in the agreement and for payment in connection with which the State is not liable by reasons of paragraph (2), only if the State—

(A) pays to the Secretary of the Treasury the amount due under such agreement with respect to such wages, and

(B) agrees in writing with the Secretary of Health, Education, and Welfare to an extension of the period specified in paragraph (2) with respect to wages paid to all individuals performing services as employees in such coverage group in the period or periods designated by the State in such wage reports as the period or [341] periods in which such wages were paid. If the State so agrees, the period specified in paragraph (2), or such period as extended pursuant to paragraph (4), shall be extended until such time as the Secretary notifies the State that such wage reports have been accepted.

(7) Notwithstanding the preceding provisions of this subsection, where there is an amount due by a State under an agreement pursuant to this section and there has been a fraudulent attempt on the part of an officer or employee of the State or any political subdivision thereof to defeat or evade payment of such amount due, the State shall be liable for such amount due without regard to the provisions of paragraph (2), and the Secretary may make an assessment of such amount due at any time.

Time Limitation on Credits and Refunds

(r)(1) No credit or refund of an overpayment by a State under an agreement pursuant to this section with respect to wages paid or alleged to have been paid to an individual as a member of a coverage group in a calendar year [342] shall be allowed after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year [342] in which such wages were paid or alleged to have been paid, or

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[341] P.L. 95-216, § 353(b)(4), deleted "calendar quarters designated by the State in such wage reports as the" and substituted "period or periods designated by the State in such wage reports as the period or", effective with respect to remuneration paid after December 31, 1977.

[342] P.L. 95-216, § 353(b)(5)(A) and (C), deleted "quarter" and substituted "year" and, § 353(b)(5)(B), deleted "in which occurred the calendar quarter", effective with respect to remuneration paid after December 31, 1977.

(B) three years after the date the payment which included such overpayment became due under such agreement with respect to the wages paid or alleged to have been paid to such individual as a member of such coverage group in such calendar year [342], or

(C) two years after such overpayment was made to the Secretary of the Treasury, or

(D) three years, three months, and fifteen days after the year following the year in which this subsection is enacted [343],

unless prior to the expiration of such period a claim for such credit or refund is filed with the Secretary of Health, Education, and Welfare by the State.

(2) A claim for a credit or refund filed by a State after the expiration of the period specified by paragraph (1) shall nevertheless be deemed to have been filed within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this subparagraph, of such period as so extended) the State and the Secretary agreed in writing to an extension of such period (or extended period) and the claim is filed with the Secretary by the State prior to the expiration of such extension; but any claim for a credit or refund valid because of this subparagraph shall be allowed only to the extent authorized by the conditions provided for in the agreement for such extension, or

(B) the Secretary deletes from his records an entry with respect to wages of an individual pursuant to the provisions of subparagraph (A), (B), or (E) of section 205(c)(5), but only with respect to the entry so deleted.

Review by Secretary

(s) Where the Secretary has made an assessment of an amount due by a State under an agreement pursuant to this section, disallowed a State's claim for a credit or refund of an overpayment under such agreement, or allowed a State a credit or refund of an overpayment under such agreement, he shall review such assessment, disallowance, or allowance if a written request for such review is filed with him by the State within 90 days (or within such further time as he may allow) after notification to the State of such assessment, disallowance, or allowance. On the basis of the evidence obtained by or submitted to the Secretary, he shall render a decision affirming, modifying, or reversing such assessment, disallowance, or allowance. In notifying the State of his decision, the Secretary shall state the basis therefor.

Review by Court

(t)(1) Notwithstanding any other provision of this title any State, irrespective of the amount in controversy, may file, within two years after the mailing to such State of the notice of any decision by the Secretary pursuant to subsection (s) affecting such State, or within such further time as the Secretary may allow, a civil action for a redetermination of the correctness of the assessment of the

[343] Enacted September 13, 1960 (P.L. 86-778, § 102(f)(1), 74 Stat. 932). The date described in this subparagraph is April 15, 1965.

amount due, the disallowance of the claim for a refund or credit, or the allowance of the refund or credit, as the case may be, with respect to which the Secretary has rendered such decision. Such action shall be brought in the district court of the United States for the judicial district in which is located the capital of such State, or, if such action is brought by an instrumentality of two or more States, the principal office of such instrumentality. The judgment of the court shall be final, except that it shall be subject to review in the same manner as judgments of such court in other civil actions. Any action filed under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(2) Notwithstanding the provisions of section 2411 of title 28, United States Code [344], no interest shall accrue to a State after final judgment with respect to a credit or refund of an overpayment made under an agreement pursuant to this section.

(3) The first sentence of section 2414 of title 28, United States Code [345], shall not apply to final judgments rendered by district courts of the United States in civil actions filed under this subsection. In such cases, the payment of amounts due to States pursuant to such final judgments shall be adjusted in accordance with the provisions of this section and with regulations promulgated by the Secretary.

Positions Compensated Solely on a Fee Basis

(u)(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is agreed to by the Secretary and the State.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

[Sec. 219. Repealed.[346]]

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[344] See 28 U.S.C. 2411, in Vol. II, p. 1179.
[345] See 28 U.S.C. 2414, in Vol. II, p. 1179.
[346] Effective September 13, 1960 (P.L. 86-778, § 103(j)(1)).

DISABILITY PROVISIONS INAPPLICABLE IF BENEFIT RIGHTS IMPAIRED

SEC. 220. [42 U.S.C. 420] None of the provisions of this title relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this title; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this title if such benefit or payment would be greater without their application.

DISABILITY DETERMINATIONS [347]

SEC. 221. [42 U.S.C. 421] (a)(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 216(i) or 223(d)) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make such disability determinations commencing with such month as the Secretary and the State agree upon, but only if (A) the Secretary has not found, under subsection (b)(1), that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Secretary, under subsection (b)(2), that it does not wish to make such determinations. If the Secretary once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this title and the standards and criteria contained in regulations or other written guidelines of the Secretary pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Secretary shall promulgate regulations specifying, in such detail as he deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to

[347] See P.L. 95-480, Social Security Administration, with respect to limitation on administrative expenses, in Vol. II, p. 1695.

applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Secretary, and, as he finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Secretary may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Secretary to take any action except pursuant to law or to regulations promulgated pursuant to law.[348]

(b)(1) If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1).

(2) If a State, having notified the Secretary of its intent to make disability determinations under subsection (a)(1), no longer wishes to make such determinations, it shall notify the Secretary in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Secretary has complied with the requirements of paragraph (3). Thereafter, the Secretary shall make the disability determinations referred to in subsection (a)(1).

(3)(A) The Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant adminis-

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[348] P.L. 96-265, § 304(a), amended subsection (a) in its entirety, effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under section 221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in section 221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given. For subsection (a) as it formerly read, see Vol. II, p. 1827.

trator (or his equivalent) of the State agency, in which case the Secretary may accord such priority to such employee.

(B) The Secretary shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.[349] [350]

(c)(1) The Secretary may on his own motion or as required under paragraphs (2) and (3) review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 216(i) or 223(d)) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Secretary on his own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

(2) The Secretary (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 216(i) or 223(d)). Any review by the Secretary of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(3) In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 216(i) or 223(d)), the Secretary shall review—

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[349] P.L. 96-265, § 304(b), amended subsection (b) in its entirety, effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under section 221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in section 221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given. For subsection (b) as it formerly read, see Vol. II, p. 1827.

[350] See P.L. 96-265, § 304(i) with respect to the Secretary's report to Congress on plans for making certain disability determinations and meeting the requirements of § 221(b)(3), in Vol. II, p. 1505.

(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982.[351]

(d) Any individual dissatisfied with any determination under subsection (a), (b) [352], (c), or (g) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).[353]

(e) Each State which is making disability determinations under subsection (a)(1) [354] under this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Secretary [355], the cost to the State of making disability determinations under subsection (a)(1) [356]. The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 201 (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Trust Fund is charged with all expenses incurred which are attributable to the administration of section 223 and the Feder-

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[351] P.L. 96-265, § 304(c), amended subsection (c) in its entirety, effective June 9, 1980. For subsection (c) as it formerly read, see Vol. II, p. 1828.

[352] P.L. 96-265, § 304(d), deleted "(a)" and substituted "(a), (b)", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under § 221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in § 221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

[353] See P.L. 96-265, § 304(g), with respect to implementation of decisions of administrative law judges, in Vol. II, p. 1505.

[354] P.L. 96-265, § 304(e)(1), deleted "which has an agreement with the Secretary" and substituted "which is making disability determinations under subsection (a)(1)", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under section 221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in section 221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

[355] P.L. 96-265, § 304(e)(2), deleted "as may be mutually agreed upon" and substituted "as determined by the Secretary", effective June 1981. For the effect on the current agreement, see footnote 354, above.

[356] P.L. 96-265, § 304(e)(3), deleted "carrying out the agreement under this section" and substituted "making disability determinations under subsection (a)(1)", effective June 1981. For the effect on the current agreement, see footnote 354 of this title.

al Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

(g) In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1), or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines [357], in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations [357A], the determinations referred to in subsection (a) shall be made by the Secretary in accordance with regulations prescribed by him.

(i) [358] In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years; except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Secretary determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this title.[359]

REHABILITATION SERVICES [360] [361]

Referral for Rehabilitation Services

SEC. 222. [42 U.S.C. 422] (a) It is hereby declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under the Vocational Rehabilita-

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[357] P.L. 96-265, § 304(f)(1), deleted "has no agreement under subsection (b)" and substituted "does not undertake to perform disability determinations under subsection (a)(1), or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under § 221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in § 221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

[357A] P.L. 96-265, § 304(f)(2), deleted "not included in an agreement under subsection (b)" and substituted "for whom no State undertakes to make disability determinations", effective June 1981. For the effect on the current agreement, see footnote 357 of this title.

[358] As in original. No subsection (h) in law.

[359] P.L. 96-265, § 311(a), added subsection (i), effective January 1, 1982.

See P.L. 96-265, § 312, with respect to the Secretary's report to Congress on the effects of these amendments, in Vol. II, p. 1506.

[360] P.L. 93-112 (Rehabilitation Act of 1973), § 500(a), repealed the Vocational Rehabilitation Act, effective December 25, 1973, and deemed references to be to the Rehabilitation Act of 1973. For relevant material, see P.L. 93-112, §§ 101, 501, 601-613, in Vol. II, p. 1476.

[361] See P.L. 95-602, § 401(c), with respect to a study of research and demonstration projects, in Vol. II, p. 1700.

tion Act [360] for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

Deductions on Account of Refusal To Accept Rehabilitation Services

(b)(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under sections 202 and 223 for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow, widower or surviving divorced wife who has not attained age 60, or an individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act [360]. Any individual who is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act [360], shall, for the purposes of the first sentence of this subsection, be deemed to have done so with good cause.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled or from any mother's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or such mother's insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's insurance benefits is married to an individual who is entitled to disability insurance benefits and in which such individual refuses to accept rehabilitation services and a deduction, on account of such refusal, is imposed under paragraph (1). If both this paragraph and paragraph (3) are applicable to a child's insurance benefit for any month, only an amount equal to such benefit shall be deducted.

(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, or child is entitled, until the total of such deductions equal such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on account of such refusal, are imposed under paragraph (1).

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during

which he is a full-time student (as defined and determined under section 202(d)).

Period of Trial Work

(c)(1) The term "period of trial work", with respect to an individual entitled to benefits under section 223, 202(d), 202(e), or 202(f) [362], means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 216(i) and 223, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 202(d) who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later, or, in the case of an individual entitled to widow's or widower's insurance benefits under section 202(e) or (f) who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled.[363] Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month [364] following the month in which this paragraph is enacted [364]; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 223(d)) ceases (as determined after application of paragraph (2) of this subsection).

(5) In the case of an individual who becomes entitled to benefits under section 223 for any month as provided in clause (ii) of subsection (a)(1) of such section, the preceding provisions of this subsection shall not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 223.

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[362] P.L. 96-265, § 303(a)(1), deleted "223 or 202(d)" and substituted "223, 202(d), 202(e), or 202(f)", effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

[363] P.L. 96-265, § 303(a)(2), deleted the period at the end of the first sentence and inserted ", or, in the case of an individual entitled to widow's or widower's insurance benefits under section 202(e) or (f) who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled.", effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

[364] The month is October 1960. The paragraph was enacted on September 13, 1960, as part of P.L. 86-778 (74 Stat. 968).

Costs of Rehabilitation Services From Trust Funds

(d)(1) For the purpose of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 223, or

(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability), or

(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 202(f) prior to attaining age 60,

to the end that savings will result to the Trust Fund as a result of rehabilitating the maximum number of such individuals into productive activity, there are authorized to be transferred from the Trust Funds such sums as may be necessary to enable the Secretary to pay the costs of vocational rehabilitation services for such individuals (including (i) services during their waiting periods, and (ii) so much of the expenditures for the administration of any State plan as is attributable to carrying out this subsection); except that the total amount so made available pursuant to this subsection may not exceed—

(i) 1 percent in the fiscal year ending June 30, 1972,

(ii) 1.25 percent in the fiscal year ending June 30, 1973,

(iii) 1.5 percent in the fiscal year ending June 30, 1974, and thereafter,[365]

of the total of the benefits under section 202(d) for children who have attained age 18 and are under a disability, the benefits under section 202(e) for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 202(f) for widowers who have not attained age 60, and the benefits under section 223, which were certified for payment in the preceding year. The selection of individuals (including the order in which they shall be selected) to receive such services shall be made in accordance with criteria formulated by the Secretary which are based upon the effect the provision of such services would have upon the Trust Funds.

(2) In the case of each State which is willing to do so, such vocational rehabilitation services shall be furnished under a State plan for vocational rehabilitation services which—

(A) has been approved under section 5 of the Vocational Rehabilitation Act [366],

(B) provides that, to the extent funds provided under this subsection are adequate for the purpose, such services will be furnished, to any individual in the State who meets the criteria prescribed by the Secretary pursuant to paragraph (1), with reasonable promptness and in accordance with the order of selection determined under such criteria, and

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[365] P.L. 94-274, § 101(a), effective April 21, 1976, provides that "fiscal year" includes the period July 1, 1976, through September 30, 1976. For the conditions to which the exercise of authority pursuant to that provision are subject, see P.L. 94-274, § 101(a), in Vol. II, p. 1659.

[366] P.L. 93-112 (Rehabilitation Act of 1973), § 500(a), repealed the Vocational Rehabilitation Act, effective December 25, 1973, and deemed references to be to the Rehabilitation Act of 1973. For relevant material, see P.L. 93-112, § 101, in Vol. II, p. 1476.

(C) provides that such services will be furnished to any individual without regard to (i) his citizenship or place of residence, (ii) his need for financial assistance except as provided in regulations of the Secretary in the case of maintenance during rehabilitation, or (iii) any order of selection which would otherwise be followed under the State plan pursuant to section 5(a)(4) of the Vocational Rehabilitation Act [367].

(3) In the case of any State which does not have a plan which meets the requirements of paragraph (2), the Secretary may provide such services by agreement or contract with other public or private agencies, organizations, institutions, or individuals.

(4) Payments under this subsection may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(5) Money paid from the Trust Funds under this subsection to pay the costs of providing services to individuals who are entitled to benefits under section 223 (including services during their waiting periods), or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such individuals shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid out from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Secretary shall determine according to such methods and procedures as he may deem appropriate—

(A) the total cost of the services provided under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount of such cost which should be charged to each of such Trust Funds.

(6) For the purposes of this subsection the term "vocational rehabilitation services" shall have the meaning assigned to it in the Vocational Rehabilitation Act [366], except that such services may be limited in type, scope, or amount in accordance with regulations of the Secretary designed to achieve the purposes of this subsection.[368]

DISABILITY INSURANCE BENEFIT PAYMENTS [369]

Disability Insurance Benefits

SEC. 223. [42 U.S.C. 423] (a)(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1)),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d))

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2)) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month

[367] See P.L. 93-112, § 101(a)(5), in Vol. II, p. 1477.

[368] See 45 C.F.R., Part 1361, Subpart D.

[369] See P.L. 96-265, § 505(a), with respect to experiments and demonstration projects regarding work activity of disabled beneficiaries, in Vol. II, p. 1506.

See P.L. 96-265, § 505(c), with respect to the Secretary's report to Congress on the experiments and demonstration projects conducted, in Vol. II, p. 1507.

during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the sixty-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains age 65, or, subject to subsection (e), the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.[370] No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

(2) Except as provided in section 202(q) and section 215(b)(2)(A)(ii)[371], such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 215 as though he had attained age 62 in—

(A) the first month of his waiting period, or

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[370] P.L. 96-265, § 303(b)(1)(A), deleted "or the third month following the month in which his disability ceases." and inserted "or, subject to subsection (e), the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.", effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to such date.

[371] P.L. 96-265, § 102(b), added "and section 215(b)(2)(A)(ii)", effective only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of § 215(b)(2)(A) of the Act (as amended by P.L. 96-265, § 102(a)) shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981.

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and he was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b)) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 215(b)(3) shall not include the year in which he attained age 62, or any year thereafter.

Filing of Application

(b) An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1)) shall be deemed a valid application (and shall be deemed to have been filed in such first month) [372] only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).[373] [374] An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

Definitions of Insured Status and Waiting Period

(c) For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on the first day of such month, and

(B) (i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and

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[372] P.L. 96-265, § 306(c)(1), inserted "(and shall be deemed to have been filed in such first month)", effective with respect to applications filed after June 1980.

[373] P.L. 96-265, § 306(c)(2), deleted a period and added "and no request under section 205(b) for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).", effective with respect to applications filed after June 1980.

[374] P.L. 96-265, § 306(c)(3), deleted "If, upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed in such first month.", effective with respect to applications filed after June 1980.

not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in section 216(i)(1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) The term "waiting period" means, in the case of any application for disability insurance benefits, the earliest period of five consecutive calendar months—

(A) throughout which the individual with respect to whom such application is filed has been under a disability, and

(B) (i) which begins not earlier than with the first day of the seventeenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such seventeenth month, or (ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such seventeenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

Definition of Disability

(d)(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind

of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 202 (e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof.[375] Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.[376]

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which

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[375] P.L. 95-216, § 335, added "No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof.", effective December 20, 1977.

[376] P.L. 96-265, § 302(a)(1), added the preceding sentence, effective with respect to expenses incurred on or after December 1, 1980.

supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.[377]

(6)(A) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with the commission by an individual (after the date of the enactment of this paragraph [378]) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after the date of the enactment of this paragraph [378]) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.[379]

(e) No benefit shall be payable under subsection (d)(1)(B)(ii), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 15-month period following the end of his trial work period determined by application of section 222(c)(4)(A).[380]

Suspension of Benefits for Inmates of Penal Institutions [381]

(f)(1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section, or under section 202(d) by reason of being under a disability, to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this title on the basis of the wages and self-employment income of such a confined individual but for the provi-

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[377] P.L. 96-265, § 309(a), added the preceding sentence, effective with respect to evidence requested on or after December 1, 1980.

[378] This paragraph was added by P.L. 96-473, enacted October 19, 1980 (94 Stat. 2263).

[379] P.L. 96-473, § 5(a)(1), added paragraph (6), effective with respect to benefits payable for months beginning on or after October 1, 1980.

[380] P.L. 96-265, § 303(b)(2)(A), added subsection (e), effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to such date.

[381] P.L. 96-473, § 5(c), added subsection (f), effective with respect to benefits payable for months beginning on or after October 1, 1980.

sions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section.

REDUCTION OF BENEFITS BASED ON DISABILITY ON ACCOUNT OF RECEIPT OF WORKMEN'S COMPENSATION

SEC. 224. [42 U.S.C. 424] (a) If for any month prior to the month in which an individual attains the age of 62—

(1) such individual is entitled to benefits under section 223, and

(2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State, to periodic benefits for a total or partial disability (whether or not permanent), and the Secretary has, in a prior month, received notice of such entitlement for such month,

the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 223 and 202 for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan,

exceeds the higher of—

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 215(b) as in effect prior to January 1979) [382] used for purposes of computing his benefits under section 223, (B) one-sixtieth of the total of his wages and self-employment income (com-

[382] P.L. 95-216, § 205(d), added "(determined under section 215(b) as in effect prior to January 1979)" effective with respect to monthly benefits payable for months after December 1978 and with respect to lump-sum death payments on deaths occurring after December 1978.

puted without regard to the limitations specified in section 209(a) and 211(b)(1)) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209(a) and 211(b)(1)) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year.[383]

(b) If any periodic benefit under a workmen's compensation law or plan is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Secretary finds will approximate as nearly as practicable the reduction prescribed by subsection (a).

(c) Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 203, but before deductions under such section and under section 222(b).

(d) The reduction of benefits required by this section shall not be made if the workmen's compensation law or plan under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this title on the basis of the wages and self-employment income of an individual entitled to benefits under section 223.

(e) If it appears to the Secretary that an individual may be eligible for periodic benefits under a workmen's compensation law or plan which would give rise to reduction under this section, he may require, as a condition of certification for payment of any benefits under section 223 to any individual for any month and of any benefits under section 202 for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Secretary may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 205(i).

(f)(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 and any benefits under section 202 based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Secretary shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable

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[383] P.L. 95-216, § 353(c)(1), deleted "In any case where an individual's wages and self-employment income reported to the Secretary for a calendar year reach the limitations specified in sections 209(a) and 211(b)(1), the Secretary under regulations shall estimate the total of such wages and self-employment income for purposes of clauses (B) and (C) of the preceding sentence on the basis of such information as may be available to him indicating the extent (if any) by which such wages and self-employment income exceed such limitations.", effective with respect to estimates for calendar years beginning after December 31, 1977.

under this title on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a)) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a);

(B) the ratio of (i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability); and

(C) in any case in which the reduction was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of $1 shall be reduced to the next lower multiple of $1.[384]

(g) Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefits shall then be applied to such disability insurance benefit.

SUSPENSION OF BENEFITS BASED ON DISABILITY

SEC. 225. [42 U.S.C. 425] (a)[385] If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 223, or that a child who has attained the age of eighteen and is entitled to benefits under section 202(d), or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 202(e), or that a widower who has not attained age 60 and is entitled to benefits under section 202(f), may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 202(d), 202(e), 202(f), or 223 until it is determined (as provided in section 221) whether or not such indi-

[384] P.L. 95-216, § 353(c)(2), amended paragraph (2) in its entirety, effective January 1, 1979. For paragraph (2) as it formerly read, see Vol. II, p. 1802.

[385] P.L. 96-265, § 301(a)(1), inserted "(a)", effective December 1, 1980, with respect to individuals whose disability has not been determined to have ceased prior to such date.

vidual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 221(b), the Secretary shall promptly notify the appropriate State of his action under this subsection [386] and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this subsection [386], the term "disability" has the meaning assigned to such term in section 223(d). Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 202, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection [386] shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

(b) Notwithstanding any other provision of this title, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

(1) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973 [387], and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.[388]

ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS [389]

SEC. 226. [42 U.S.C. 426] (a) [390] Every individual who—

(1) [390] has attained age 65, and

(2) [390] is entitled to monthly insurance benefits under section 202, or would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to which for any individual is a condition of entitlement therefor) and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of title XVIII,[391] or is a qualified railroad retirement beneficiary,

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[386] P.L. 96-265, § 301(a)(2), deleted "this section" and substituted "this subsection", effective December 1, 1980, with respect to individuals whose disability has not been determined to have ceased prior to that date.

[387] See P.L. 93-112 in Vol. II, p. 1475.

[388] P.L. 96-265, § 301(a)(1), added subsection (b), effective December 1, 1980, with respect to individuals whose disability has not been determined to have ceased prior to that date.

[389] See § 226A for special provisions relating to end stage renal disease and § 1881(d) with respect to an individual who donates a kidney for transplant surgery.

See P.L. 96-473, § 2(c), with respect to the effective date of certain applications filed before January 1, 1981, in Vol. II, p. 1737.

[390] P.L. 93-233, § 18(f)(1)(A) redesignated (a)(1) as (a), and § 18(f)(1)(B) redesignated (A) and (B) as (1) and (2), respectively, effective December 31, 1973.

[391] P.L. 96-473, § 2(a), added ", or would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to

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shall be entitled to hospital insurance benefits under part A of title XVIII for each month for which he meets the condition specified in paragraph (1) [392], beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2) [393].

(b) Every individual who—

(1) has not attained age 65, and

(2)(A) is entitled to, and has for 24 [394] calendar months been entitled to, (i) disability insurance benefits under section 223 or (ii) child's insurance benefits under section 202(d) by reason of a disability (as defined in section 223(d)) or (iii) widow's insurance benefits under section 202(e) or widower's insurance benefits under section 202(f) by reason of a disability (as defined in section 223(d)), or (B) is, and has been for not less than 24 [394] months a disabled qualified railroad retirement beneficiary, within the meaning of section 7(d) of the Railroad Retirement Act of 1974 [395],

shall be entitled to hospital insurance benefits under part (A) [395A] of title XVIII for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth [394] month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month [396] following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 222(c)(4)(A), and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under title II or as a qualified railroad retirement beneficiary had such individual been unable to

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which for any individual is a condition of entitlement therefor) and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of title XVIII," effective January 1, 1981.

[392] P.L. 95–292, § 3(a)(1), deleted "subparagraph (B)" and substituted "paragraph (1)". For effective date, see P.L. 95–292, § 6, in Vol. II, p. 1694.

[393] P.L. 95–292, § 3(a)(2), deleted "subparagraphs (A) and (B)" and substituted "paragraphs (1) and (2)". For effective date, see P.L. 95–292, § 6, in Vol. II, p. 1694.

[394] P.L. 96–265, § 103(a)(1), deleted "consecutive", effective with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after December 1, 1980.

[395] P.L. 93–445, § 305(a), deleted "section 22 of the Railroad Retirement Act of 1937" and substituted "section 7(d) of the Railroad Retirement Act of 1974", effective January 1, 1975. See P.L. 75–162 (Railroad Retirement Act of 1974), § 7(d), in Vol. II, p. 1273.

[395A] As in original. Should be "part A".

[396] P.L. 96–265, § 104(a)(1), deleted "ending with the month" and substituted "ending (subject to the last sentence of this subsection) with the month", effective on December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

engage in substantial gainful activity, but not in excess of 24 such months.[397]

(c) For purposes of subsection (a)—

(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payment made under, and subject to the limitations in, part A of title XVIII on his behalf for inpatient hospital services, post-hospital extended care services, and [398] home health services (as such terms are defined in part C of title XVIII) furnished him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1814(f)) during such month; except that (A) no such payment may be made for post-hospital extended care services furnished before January 1967, and (B) no such payment may be made for post-hospital extended care services [399] unless the discharge from the hospital required to qualify such services for payment under part A of title XVIII occurred (i) after June 30, 1966, or on or after the first day of the month in which he attains age 65, whichever is later, or (ii) if he was entitled to hospital insurance benefits pursuant to subsection (b), at a time when he was so entitled; and

(2) an individual shall be deemed entitled to monthly insurance benefits under section 202 or section 223, or to be a qualified railroad retirement beneficiary, for the month in which he died if he would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had he died in the next month.

(d) For purposes of this section, the term "qualified railroad retirement beneficiary" means an individual whose name has been certified to the Secretary by the Railroad Retirement Board under section 7(d) of the Railroad Retirement Act of 1974 [400]. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased to meet the requirements of section 7(d) of the Railroad Retirement Act of 1974 [400].

(e) [401] (1) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(A) the term "age 60" in sections 202(e)(1)(B)(ii), 202(e)(5),[402] 202(f)(1)(B)(ii), and 202(f)(6) shall be deemed to read "age 65"; and

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[397] P.L. 96-265, § 104(a)(2), added the preceding sentence, effective on December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to such date.

[398] P.L. 96-499, § 930(q)(1), deleted "post-hospital", effective with respect to services furnished on or after July 1, 1981.

[399] P.L. 96-499, § 930(q)(2), deleted "or post-hospital home health services", effective with respect to services furnished on or after July 1, 1981.

[400] P.L. 93-445, § 305(b), deleted "section 21 or 22 of the Railroad Retirement Act of 1937" and substituted "section 7(d) of the Railroad Retirement Act of 1974", effective January 1, 1975. See P.L. 75-162 (Railroad Retirement Act of 1974), § 7(d), in Vol. II, p. 1273.

[401] P.L. 95-292, § 1(b)(1), deleted subsection (e). For the effective date, see P.L. 95-292, § 6, in Vol. II, p. 1694. For subsection (e) as it formerly read, see Vol. II, p. 1808. [P.L. 92-603, § 201(b)(5), added this subsection as (e); P.L. 92-603, § 299I, redesignated it as subsection (f).] P.L. 93-233, § 18(f), redesignated this subsection as subsection (h), effective December 31, 1973.

P.L. 95-292, § (b)(2), redesignated subsection (h) as subsection (e). For the effective date, see P.L. 95-292, § 6, in Vol. II, p. 1694.

[402] P.L. 93-233, § 18(f)(2), deleted "and 202(e)(5), and the term 'age 62' in sections" and substituted ", 202(e)(5),", effective December 31, 1973.

(B) the phrase "before she attained age 60" in the matter following subparagraph (F) of section 202(e)(1) and the phrase "before he attained age 60" in the matter following subparagraph (F) [403] of section 202(f)(1) shall each [404] be deemed to read "based on a disability".

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) [405] in the case of an individual under age 65 who is entitled to benefits under section 202, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month.

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) [405] any disabled widow age 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits) shall, upon application, for such hospital insurance benefits be deemed to have filed for such widow's benefits and shall, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary may prescribe, be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.

(4) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of an individual described in clause (iii) of subsection (b)(2)(A), the entitlement of such individual to widow's or widower's insurance benefits under section 202(e) or (f) by reason of a disability shall be deemed to be the entitlement to such benefits that would result if such entitlement were determined without regard to the provisions of section 202(j)(4).[406]

(f) For purposes of subsection (b) (and for purposes of section 1837(g)(1) of this Act and section 7(d)(2)(ii) of the Railroad Retirement Act of 1974 [407]), the 24 months for which an individual has to have been entitled to specified monthly benefits on the basis of disability in order to become entitled to hospital insurance benefits on the basis of such entitlement, by reason of section 1837(f), to have enrolled in the supplementary medical insurance program, on the basis of such entitlement, by reason of section 1837(f), where such individual had been entitled to specified monthly benefits of the same type during a previous period which terminated—

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[403] P.L. 95–216, § 334(d)(4)(B), deleted "(G)" and substituted "(F)", effective with respect to monthly benefits payable for months beginning with December 1977 on the basis of applications filed in or after December 1977.

[404] P.L. 93–233, § 18(f)(3), deleted "shall" and substituted "and the phrase 'before he attained age 60' in the matter following subparagraph (G) of section 202(f)(1) shall each", effective December 31, 1973.

[405] P.L. 93–233, § 18(f)(4), deleted "(a)(2)" and substituted "b", effective December 31, 1973. P.L. 95–292, § 3(b), deleted "b" and substituted "(b)". For the effective date, see P.L. 95–292, § 6, in Vol. II, p. 1694.

[406] P.L. 95–216, § 332(a)(3), added paragraph (4), effective with respect to monthly benefits payable on the basis of applications filed on or after January 1, 1978.

[407] See P.L. 75–162, § 7(d)(2)(ii), in Vol. II, p. 1274.

(1) more than 60 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(i) or (B) of subsection (b)(2), or

(2) more than 84 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(ii) or (A)(iii) of such subsection,

shall not include any month which occurred during such previous period.[408] [409]

(g) [409] [410] For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 103 of the Social Security Amendments of 1965 [411].

SPECIAL PROVISIONS RELATING TO COVERAGE UNDER MEDICARE PROGRAM FOR END STAGE RENAL DISEASE [412]

SEC. 226A. [42 U.S.C. 426-1] (a) Notwithstanding any provision to the contrary in section 226 or title XVIII, every individual who—

(1)(A) is fully or currently insured (as such terms are defined in section 214 of this Act) or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1974) after December 31, 1936, were included in the term "employment" as defined in this Act, or (B) is entitled to monthly insurance benefits under title II of this Act or an annuity under the Railroad Retirement Act of 1974, or (C) is the spouse or dependent child (as defined in regulations) of an individual who is fully or currently insured or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1974) after December 31, 1936, were included in the term "employment" as defined in this Act, or (D) is the spouse or dependent child (as defined in regulations) of an individual entitled to monthly insurance benefits under title II of this Act or an annuity under the Railroad Retirement Act of 1974;

(2) is medically determined to have end stage renal disease; and

(3) has filed an application for benefits under this section;

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of title XVIII, subject to the deductible, premium, and coinsurance provisions of that title.

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[408] P.L. 96-265, § 103(b), added this subsection (f), effective with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after December 1, 1980.

[409] P.L. 95-292, § 1(b)(1), deleted prior subsections (f) and (g). For the effective date, see P.L. 95-292, § 6, in Vol. II, p. 1694. For prior subsections (f) and (g) as they formerly read, see Vol. II, p. 1809.

[410] P.L. 96-265, § 103(b), redesignated this subsection (f) as subsection (g), effective with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after December 1, 1980. [P.L. 89-97, § 101, added this subsection as (d); P.L. 92-603, § 201(b)(5), redesignated it as subsection (f).]

P.L. 93-233, § 18(f), redesignated this subsection as subsection (i), effective December 31, 1973.

P.L. 95-292, § 1(b)(2), redesignated this subsection from (i) to (f). For the effective date, see P.L. 95-292, § 6, in Vol. II, p. 1694.

[411] See P.L. 89-97, § 103, in Vol. II, p. 1433.

[412] P.L. 95-292, § 1(a), added § 226A. For the effective date, see P.L. 95-292, § 6, in Vol. II, p. 1694.

(b) Subject to subsection (c), entitlement of an individual to benefits under part A and eligibility to enroll under part B of title XVIII by reasons of this section on the basis of end stage renal disease—

(1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1861(e) (and such additional requirements as the Secretary may prescribe under section 1881(b) for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

(c) Notwithstanding the provisions of subsection (b)—

(1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1881(b), entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such regular course of renal dialysis is initiated;

(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2)) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such course is initiated or resumed; and

(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such regular course of renal dialysis is resumed.

TRANSITIONAL INSURED STATUS

SEC. 227. [42 U.S.C. 427] (a) In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 214(a), the 6 quarters of coverage referred to in paragraph (1) of section 214(a) shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individu-

al to benefits under section 202(a), and of his wife to benefits under section 202(b), but, in the case of such wife, only if she attains the age of 72 before 1969 and only with respect to wife's insurance benefits under section 202(b) for and after the month in which she attains such age. For each month before the month in which any such individual meets the requirements of section 214(a), the amount of his old-age insurance benefit shall, notwithstanding the provisions of section 202(a), be the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i)[413] [414] and the amount of the wife's insurance benefit of his wife shall, notwithstanding the provisions of section 202(b), be the larger of $32.20 or the amount most recently established in lieu thereof under section 215(i)[413] [414].

(b) In the case of any individual who has died, who does not meet the requirements of section 214(a), and whose widow attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 214(a) and in paragraph (1) thereof shall, for purposes of determining her entitlement to widow's insurance benefits under section 202(e), instead be—

(1) 3 quarters of coverage if such widow attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such widow attains the age of 72 in 1967, or

(3) 5 quarters of coverage if such widow attains the age of 72 in 1968.

The amount of her widow's insurance benefit for each month shall, notwithstanding the provisions of section 202(e) (and section 202(m)), be the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i)[415].

(c) In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 202(a) by reason of the application of subsection (a) of this section, who dies, and whose widow attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such widow to widow's insurance benefits under section 202(e).

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[413] P.L. 93-233, § 2(b)(1), deleted "$58.00" and substituted "the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i)" and deleted "$29.00" and substituted "the larger of $32.20 or the amount most recently established in lieu thereof under section 215(i)", effective with respect to monthly benefits for months after May 1974, and with respect to lump-sum death payments on deaths occurring after May 1974.

[414] The following rate increases have been made pursuant to § 215(i):

$69.60 & $34.80, Effective June 1975 (40 FR 22289; May 22, 1975)
$74.10 & $37.10, Effective June 1976 (41 FR 19999; May 14, 1976)
$78.50 & $39.30, Effective June 1977 (42 FR 24210; May 12, 1977)
$83.70 & $41.90, Effective June 1978 (43 FR 20867; May 15, 1978)
$92.00 & $46.10, Effective June 1979 (44 FR 28423; May 15, 1979)
$105.20 & $52.70, Effective June 1980 (45 FR 31781; May 14, 1980)

[415] P.L. 93-233, § 2(b)(1), deleted "$58.00" and substituted "the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i)", effective with respect to monthly benefits for months after May 1974, and with respect to lump-sum death payments on deaths occurring after May 1974.

BENEFITS AT AGE 72 FOR CERTAIN UNINSURED INDIVIDUALS [416]

Eligibility

SEC. 228. [42 U.S.C. 428] (a) Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is a resident of the United States (as defined in subsection (e)), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 210(i)) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he becomes so entitled to such benefits and ending with the month preceding the month in which he dies. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

Benefit Amount

(b)(1) Except as provided in paragraph (2), the benefit amount to which an individual is entitled under this section for any month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i) [417].

(2) If both husband and wife are entitled (or upon application would be entitled) to benefits under this section for any month, the amount of the husband's benefit for such month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i) [417] and the amount of the wife's benefit for such month shall be the larger of $32.20 or the amount most recently established in lieu thereof under section 215(i) [417].

Reduction for Governmental Pension System Benefits

(c)(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he is eligible for such month.

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[416] In P.L. 94-241, § 1, effective March 24, 1976, Congress approved the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America". § 502 of that Covenant provides that § 228 of this Act is applicable to the Northern Mariana Islands, except as otherwise provided. Proclamation 4534 of The President, dated October 24, 1977, provides that § 502 is effective at 11 A.M., January 9, 1978, Northern Mariana Islands local time. See Appendix E, in Vol. II, p. 1022.

See P.L. 94-255, § 2, with respect to applicability of certain Federal laws to Guam on same basis as to Northern Mariana Islands, in Vol. II, p. 1659.

[417] P.L. 93-233, § 2(b)(1), deleted "$58.00" and substituted "the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i)", effective with respect to monthly benefits for months after May 1974, and with respect to lump-sum death payments on deaths occurring after May 1974.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the larger of $32.20 or the amount most recently established in lieu thereof under section 215(i)[417].

(3) In the case of a husband and wife both of whom are entitled to benefits under this section for any month—

(A) the benefit amount of the wife, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband is eligible for such month, over (ii) the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i)[417], and

(B) the benefit amount of the husband, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife is eligible for such month, over (ii) the larger of $32.20 or the amount most recently established in lieu thereof under section 215(i)[417].

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his spouse having retired, such individual and his spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Secretary shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than $1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of $0.10, it shall be raised to the next higher multiple of $0.10.

(8) Under regulations prescribed by the Secretary, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than $5 may be accumulated until they equal or exceed $5.

Suspension for Months in Which Cash Payments Are Made Under Public Assistance

(d) The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under title I, X, XIV, or XVI or part A of title IV, or

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Secretary, at such time and in such manner as may be prescribed in accordance with regulations of the Secretary, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month and such individual is not an individual with respect to whom supplemental security income benefits are payable pursuant to title XVI or section 211 of Public Law 93-66 [419] for the following month, nor shall such benefit be paid for such month if such individual is an individual with respect to whom supplemental security income benefits are payable pursuant to title XVI or section 211 of Public Law 93-66 for such month, unless the Secretary determines that such benefits are not payable with respect to such individual for the month following such month [420].

Suspension Where Individual Is Residing Outside the United States

(e) The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term "United States" means the 50 States and the District of Columbia.

Treatment as Monthly Insurance Benefits

(f) For purposes of subsections (t) and (u) of section 202, and of section 1840, a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 202.

Annual Reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

(g) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Secretary of Health, Education, and Welfare deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which

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[419] See P.L. 93-66, § 211, in Vol. II, p. 1469.

[420] P.L. 93-233, § 18(c), effective December 31, 1973, added "and such individual is not an individual" and all that follows through "for the month following such month".

falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

Definitions

(h) For purposes of this section—

(1) The term "quarter of coverage" includes a quarter of coverage as defined in section 5(l) of the Railroad Retirement Act of 1937 [421].

(2) The term "governmental pension system" means the insurance system established by this title or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Veterans' Administration as compensation for service-connected disability or death).

(3) The term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 216 without regard to subsections (b) and (f) of section 216.

BENEFITS IN CASE OF MEMBERS OF THE UNIFORMED SERVICES

SEC. 229. [42 U.S.C. 429] (a) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any individual, and for purposes of section 216(i)(3), such individual, if he [422] was paid wages for service as a member of a uniformed service (as defined in section 210(m)) which was included in the term "employment" as defined in section 210(a) as a result of the provisions of section 210(l), shall be deemed to have been paid—

(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and

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[421] P.L. 93-445, § 101, amended the Railroad Retirement Act of 1937 in its entirety, effective January 1, 1975. In general, § 2 of the 1974 Act replaces § 5 of the 1937 Act. See P.L. 75-162 (Railroad Retirement Act of 1974), § 2, in Vol. II, p. 1266.

[422] P.L. 95-216, § 353(d)(1), deleted "shall be deemed to have been paid, in each calendar quarter occurring after 1956 in which he" and substituted ", if he", effective January 1, 1978.

(2) in each calendar year occurring after 1977 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.[423]

(b) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this title and part A of title XVIII are paid after December 1967, such sums as the Secretary determines to be necessary to meet (1) the additional costs, resulting from subsection (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts. Such additional costs shall be determined after any increases in such benefits arising from the application of section 217 have been made.

ADJUSTMENT OF THE CONTRIBUTION AND BENEFIT BASE

SEC. 230. [42 U.S.C. 430] (a) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the June [424] following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs [425] the contribution and benefit base determined under subsection (b) or (c) [426] which shall be effective [427] with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) The amount of such contribution and benefit base shall (subject to subsection (c)) [428] be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) the contribution and benefit base which is [429] in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) is [429] made, and

(2) the ratio of (A) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under

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[423] P.L. 95-216, § 353(d)(2), deleted "wages (in addition to the wages actually paid to him for such service) of $300." and substituted "shall be deemed to have been paid—(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and (2) in each calendar year occurring after 1977 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.", effective January 1, 1978.

See 10 U.S.C. 977, with respect to denial of deemed wages, in Vol. II, p. 1157.

[424] P.L. 93-233, § 3(j)(1)(A), deleted "first month of the calendar year" and substituted "June", effective December 31, 1973.

[425] P.L. 93-233, § 3(j)(1)(B), deleted "(along with the publication of such benefit increase as required by section 215(i)(2)(D))", effective December 31, 1973.

[426] P.L. 95-216, § 103(a)(1), added "or (c)", effective with respect to remuneration paid or received, and taxable years beginning, after 1977.

[427] P.L. 93-233, § 3(j)(1)(B), deleted "(unless such increase in benefits is prevented from becoming effective by section 215(i)(2)(E))", effective December 31, 1973.

[428] P.L. 95-216, § 103(a)(2), added "(subject to subsection (c))", effective with respect to remuneration paid or received, or taxable years beginning, after 1977.

[429] P.L. 95-216, § 353(e)(2), substituted "is" for "was" before "in" and for "with respect to such calendar year was" before "made", effective January 1, 1979.

subsection (a) is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a),[430]

with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.[431]

(c) For purposes of this section, and for purposes of determining wages and self-employment income under sections 209, 211, 213, and 215 of this Act and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1954, (1) [432] the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June [433] of which the first increase in benefits pursuant to section 215(i) of this Act becomes effective shall be $13,200 [434] or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,

(B) in 1979 shall be $22,900,

(C) in 1980 shall be $25,900, and [435]

(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) and to be the amount determined (with respect to the years involved) under that subsection. For purposes of determining employer tax liability under section 3221(a) of the Internal Revenue Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which results from the application of the 9.5 percent rate specified

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[430] P.L. 94-202, § 8(h)(1), amended paragraph (2) in its entirety, effective January 2, 1976. For paragraph (2) as it formerly read, see Vol. II, p. 1775.

P.L. 95-216, § 353(e)(3), amended paragraph (2) in its entirety, effective January 1, 1979. For paragraph (2) as it formerly read, see Vol. II, p. 1802.

[431] P.L. 95-216, § 353(e)(1), deleted "For purposes of this subsection, the average of the wages for the calendar year 1978 (or any prior calendar year) shall, in the case of determinations made under subsection (a) prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.", effective January 1, 1979. P.L. 94-202, § 8(h)(2), added this sentence, effective January 2, 1976.

For "average of the total wages" figures, see Appendix B, in Vol. II, p. 1013.

[432] P.L. 95-216, § 103(b)(1), added "(1)", effective with respect to remuneration paid or received, and taxable years beginning, after 1977.

[433] P.L. 93-233, § 3(j)(2), deleted "first month" and substituted "June", effective December 31, 1973.

[434] P.L. 93-66, §203(c), deleted "$12,000" and substituted "$12,600", effective with respect to remuneration paid, and taxable years beginning, after 1973.

P.L. 93-233, § 5(c), deleted "$12,600" and substituted "$13,200", effective only with respect to remuneration paid, and taxable years beginning, after 1973.

[435] $20,400 is the 1980 amount under pre-1977 law; 45 FR 21715 dated April 2, 1980. $20,400 is used in figuring special minimum benefits for workers with many years of low earnings, for certain railroad retirement program purposes, and for ERISA.

therein, and for purposes of computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 [436], except with respect to annuity amounts determined under section 3(a) or (3)(f)(3) [436A] of such Act, clause (2) and the preceding sentence of this subsection shall be disregarded.[437]

(d) Notwithstanding any other provision of law, the contribution and benefit base determined under this section for any calendar year after 1976 for purposes of section 4022(b)(3)(B) of Public Law 93-406 [438], with respect to any plan, shall be the contribution and benefit base that would have been determined for such year if this section as in effect immediately prior to the enactment of the Social Security Amendments of 1977 [439] had remained in effect without change.[440]

BENEFITS IN CASE OF CERTAIN INDIVIDUALS INTERNED DURING WORLD WAR II

SEC. 231. [42 U.S.C. 431] (a) For the purposes of this section the term "internee" means an individual who was interned during any period of time from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry.

(b)(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in the case of a death after such month, payable under this title on the basis of the wages and self-employment income of any individual, and for purposes of section 216(i)(3), such individual shall be deemed to have been paid during any period after he attained age 18 and for which he was an internee, wages (in addition to any wages actually paid to him) at a weekly rate of basic pay during such period as follows—

(A) in the case such individual was not employed prior to the beginning of such period, 40 multiplied by the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, United States Code [441], for each full week during such period; and

(B) in the case such individual who was employed prior to the beginning of such period, 40 multiplied by the greater of (i) the highest hourly rate received during any such employment, or (ii) the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, United States Code [441], for each full week during such period.

(2) This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

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[436] P.L. 75-162, as amended by P.L. 93-445 (88 Stat. 1305, October 16, 1974).

[436A] As in original.

[437] P.L. 95-216, § 103(b)(2), changed the final "." to ", and" and added paragraph (2), effective with respect to remuneration paid or received, and taxable years beginning, after 1977.

[438] See P.L. 93-406 (Employee Retirement Income Security Act of 1974), § 4022(b)(3)(B), in Vol. II, p. 1494.

[439] December 20, 1977. (P.L. 95-216; 91 Stat. 1509).

[440] P.L. 95-216, § 103(c)(1), added subsection (d), effective with respect to plan terminations occurring after December 20, 1977.

[441] See 29 U.S.C. 206(a)(1), in Vol. II, p. 1183.

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump-sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon internment during any period from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry, is determined by any agency or wholly owned instrumentality of the United States to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3).

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Secretary of Health, Education, and Welfare shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined by such agency or instrumentality to be payable by it. If the Secretary of Health, Education, and Welfare has not been so notified, he shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any individual who was an internee such information as the Secretary deems necessary to carry out his functions under paragraph (3) of this subsection.

(c) There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund for the fiscal year ending June 30, 1978, such sums as the Secretary determines would

place the Trust Funds and the Federal Hospital Insurance Trust Fund in the position in which they would have been if the preceding provisions of this section had not been enacted.

PROCESSING OF TAX DATA

SEC. 232. [42 U.S.C. 432] The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954, to the Secretary for the purposes of this title and title XI. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury.[442]

INTERNATIONAL AGREEMENTS [443]

Purpose of Agreement

SEC. 233. [42 U.S.C. 433] (a) The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this title and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this title and the social security system of such foreign country.

Definitions

(b) For the purposes of this section—

(1) the term "social security system" means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term "period of coverage" means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar

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[442] P.L. 94-202, § 8(b), added § 232, effective with respect to statements reporting income received after 1977.

Also, see Internal Revenue Code of 1954, § 6103(l) with respect to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration, § 7213(a)(1) with respect to the penalty for unauthorized disclosure of that tax return information, and § 7217 with respect to civil damages for unauthorized disclosure of that tax return information, in Vol. II, p. 1341.

[443] P.L. 95-216, § 317(a), added § 233, effective December 20, 1977.

period recognized as equivalent thereto under this title or under the social security system of a country which is a party to an agreement entered into under this section.

Crediting Periods of Coverage; Conditions of Payment of Benefits

(c)(1) Any agreement establishing a totalization arrangement pursuant to this section shall provide—

(A) that in the case of an individual who has at least 6 quarters of coverage as defined in section 213 of this Act and periods of coverage under the social security system of a foreign country which is a party to such agreement, periods of coverage of such individual under such social security system of such foreign country may be combined with periods of coverage under this title and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and disability insurance benefits under this title;

(B)(i) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this title or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this title or under the system established under the laws of such foreign country, but not under both, and (ii) the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(C) that where an individual's periods of coverage are combined, the benefit amount payable under this title shall be based on the proportion of such individual's periods of coverage which was completed under this title.

(2) Any such agreement may provide that—

(A) an individual who is entitled to cash benefits under this title shall, notwithstanding the provisions of section 202(t), receive such benefits while he resides in a foreign country which is a party to such agreement; and

(B) the benefit paid by the United States to an individual who legally resides in the United States shall, if less when added to the benefit paid by such foreign country than the benefit amount which would be payable to an entitled individual based on the first figure in (or deemed to be in) column IV of the table in section 215(a) in the case of an individual becoming eligible for such benefit before January 1, 1979, or based on a primary insurance amount determined under section 215(a)(1)(C)(i)(I) in the case of an individual becoming eligible for such benefit on or after that date, be increased so that the total of the two benefits is equal to the benefit amount which would be so payable.

(3) Section 226 shall not apply in the case of any individual to whom it would not be applicable but for this section or any agreement or regulation under this section.

(4) Any such agreement may contain other provisions which are not inconsistent with the other provisions of this title and which

the President deems appropriate to carry out the purposes of this section.

Regulations

(d) The Secretary of Health, Education, and Welfare shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

Reports to Congress; Effective Date of Agreements

(e)(1) Any agreement to establish a totalization arrangement entered into pursuant to this section shall be transmitted by the President to the Congress together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this Act.

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which each House of the Congress has been in session on each of 90 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

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TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION [1]

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APPROPRIATIONS

SEC. 301. [42 U.S.C. 502] The amounts made available pursuant to section 901(c)(1)(A) for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

PAYMENTS TO STATES [3]

SEC. 302. [42 U.S.C. 502] (a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act [4], such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.[5]

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a),

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[1] The President's Reorganization Plan No. 2 of 1949, § 1 (14 F.R. 5225, 63 Stat. 1065), transferred the Bureau of Employment Security, including the United States Employment Service, from the Federal Security Agency to the Department of Labor, effective August 20, 1949. See Vol. II, p. 1153.

Title III of the Social Security Act is administered by the Department of Labor.

Title III appears in the United States Code as §§ 501-504 of subchapter III, chapter 7, Title 42.

Regulations of the Secretary of Labor relating to title III are contained in chapter V, title 20, and subtitle A, title 29, Code of Federal Regulations. Regulations of the Secretary of Health and Human Services (formerly Secretary of Health, Education, and Welfare) relating to title III are contained in subtitle A, title 45, Code of Federal Regulations.

[2] This table of contents does not appear in the law.

[3] P.L. 94-566, § 116(a), effective January 1, 1978, amended § 1101 of this act to include the Virgin Islands within the definition of "State".

[4] The Federal Unemployment Tax Act is in §§ 3301-3311 of the Internal Revenue Code of 1954; see Vol. I, p. 737.

[5] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of this subsection.

pay, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

PROVISIONS OF STATE LAWS

SEC. 303. [42 U.S.C. 503] (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [5A], includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due [6]; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606(b) of the Federal Unemployment Tax Act [7], immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund [7A] established by section 904; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606(b) of the Federal Unemployment Tax Act [7]: *Provided,* That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further,* That the amounts specified by section 903(c)(2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices; and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Sec-

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[5A] See Internal Revenue Code of 1954, §§ 3301–3311, in Vol. I, p. 737.

[6] P.L. 91-648, § 208(a)(2)(B), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all functions, powers, and duties of the Secretary of Labor under paragraph (1). See P.L. 91-648, § 208(a)(2)(B), in Vol. II, p. 1598.

[7] See Internal Revenue Code of 1954, § 3305(b), in Vol. I, p. 751.

[7A] As in original. Should be "Unemployment Trust Fund".

retary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law.

(b) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided,* That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further,* That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

(d)(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of the Department of Agriculture

and to officers or employees of any State food stamp agency any of the following information contained in the records of such State agency—

(i) wage information,

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 [8].

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(3) For purposes of this subsection, the term "State food stamp agency" means any agency described in section 3(n)(1) of the Food Stamp Act of 1977 [8] which administers the food stamp program established under such Act.[8A]

(e)(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, directly to officers or employees of any State or local child support enforcement agency any wage information contained in the records of such State agency, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of this Act which has been approved by the Secretary of Health and Human Services under part D of title IV of this Act.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the ad-

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[8] See P.L. 88-525, Food Stamp Act of 1977, in Vol. II, p. 1412.

[8A] P.L. 96-249, § 127(b)(1), added subsection (d), effective January 1, 1983.

ministration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.[9]

(3) For purposes of this subsection, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in the last sentence of paragraph (1).[10]

JUDICIAL REVIEW

SEC. 304. [42 U.S.C. 504] (a) Whenever the Secretary of Labor—

(1) finds that a State law does not include any provision specified in section 303(a), or

(2) makes a finding with respect to a State under subsection (b), (c), (d)[11], or (e)[12] of section 303,

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code[13].

(b) The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code[14].

(d) (1) The Secretary of Labor shall not withhold any certification for payment to any State under section 302 until the expiration of 60 days after the Governor of the State has been notified of the action referred to in paragraph (1) or (2) of subsection (a) or until

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[9] See P.L. 96-499, § 1025, with respect to withholding certification of State unemployment laws, in Vol. II, p. 1744.

[10] P.L. 96-265, § 408(b)(1), added this second subsection (d), effective July 1, 1980.

P.L. 96-473, § 6(e)(1), redesignated the second subsection (d) as subsection (e), effective October 19, 1980.

[11] P.L. 96-249, § 127(b)(2), deleted "subsection (b) or (c)" and inserted "subsection (b), (c), or (d)", effective January 1, 1983. P.L. 96-265, § 408(b)(2), deleted "subsection (b) or (c)" and inserted "subsection (b), (c), or (d)", effective July 1, 1980.

[12] P.L. 96-473, § 6(e)(2), deleted "or (d)" and substituted "(d), or (e)", effective October 19, 1980.

[13] See 28 U.S.C. 2112, in Vol. II, p. 1178.

[14] See 28 U.S.C. 1254, in Vol. II, p. 1176.

the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

(e) Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible.

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES [1]

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[1] Title IV of the Social Security Act is administered by the Department of Health and Human Services (formerly Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under title IV, Part A. The Administration for Public Services, Office of Human Development Services, administers social services under title IV, Parts B, C, and E. The Office of Child Support Enforcement (whose director is the Commissioner of Social Security) administers the child support program under title IV, Part D.

Title IV appears in the United States Code as §§ 601–676, subchapter IV, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title IV are contained in chapters II, III, and XIII, title 45, Code of Federal Regulations. Regulations of the Secretary of Labor relating to title IV are contained in subtitle A, title 29, and chapter 29, title 41, Code of Federal Regulations.

See P.L. 82-183, § 618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions, in Vol. II, p. 1528.

See P.L. 88-352 (Civil Rights Act of 1964) for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 89-73, § 214, with respect to eligibility for Federal surplus property, in Vol. II, p. 1571.

See P.L. 89-97, § 121(b), with respect to restrictions on payment to a State receiving payments under title XIX, in Vol. II, p. 1435.

See P.L. 90-248, § 202(d), with respect to application of Part A of this title in determining need under a State plan, in Vol. II, p. 1443.

See P.L. 90-577, §§ 2-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 92-603, § 402, with respect to transitional administrative provision, in Vol. II, p. 1467.

See P.L. 93-247, § 4(b)(3) and § 7, with respect to coordination between programs related to child abuse and neglect, in Vol. II, p. 1620.

See P.L. 93-510, §§ 2-13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 94-241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

See P.L. 95-291, §§ 1, 2, and 5, with respect to reimbursement of certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

See P.L. 95-480, § 201, with respect to cutting volume of waste, fraud, and abuse in Aid to Families with Dependent Children payments, in Vol. II, p. 1696.

See P.L. 96-272, § 309, with respect to postponement of imposition of certain penalties relating to child support requirements, in Vol. II, p. 1509.

[2] This table of contents does not appear in the law.

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PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN [3]

APPROPRIATION

SECTION 401. [42 U.S.C. 601] For the purpose of encouraging the care of dependent children in their own homes or in the homes of

[3] See P.L. 88-525, § 11(e), with respect to inquiry into the need for food stamps, in Vol. II, p. 1423.

Continued

relatives by enabling each State [4] to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

STATE PLANS FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN [5]

SEC. 402. [42 U.S.C. 602] (a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; (5) provide [6] such methods of administration (including after January 1, 1940, methods relating to the establishment and mainte-

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See P.L. 93-647, § 3(f), with respect to child day care, in Vol. II, p. 1644.

See 29 U.S.C. 49b(a), with respect to the supply of information, in Vol. II, p. 1181.

See P.L. 95-30, § 401(a), with respect to the work incentive program, in Vol. II, p. 1674.

See P.L. 95-291, §§ 1 and 2, with respect to reimbursement of certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

See P.L. 96-223, § 313(c)(1), with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1735.

See P.L. 96-272, § 101(b) with respect to the Secretary's report to Congress on foster care and adoption, in Vol. II, p. 1508.

See P.L. 96-272, § 103(d), with respect to the applicability of § 422(b)(1) in certain cases, in Vol. II, p. 1509.

[4] See P.L. 94-241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

[5] See P.L. 95-171, § 3(b), with respect to the provision of goods or services by check drawn to the order of the recipient and of the person supplying goods or services, in Vol. II, p. 1678.

[6] P.L. 93-647, § 3(a)(1), deleted "(A)" and ", and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that in the case of Guam, Puerto Rico, and the Virgin Islands, § 402(a)(5) continues to read as follows:

"(5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community services aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting and advisory committees established by the State agency; and".

nance of personnel standards on a merit basis, except that the Administrator [7] shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Administrator [7] to be necessary for the proper and efficient operation of the plan [6 7]; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Administrator [7] may from time to time require, and comply with such provisions as the Administrator [7] may from time to time find necessary to assure the correctness and verification of such reports; (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; [8] (8) provide that, in making the determination under clause (7), the State agency—

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[7] Functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare by section 5 of Reorganization Plan No. 1 of 1953 (42 U.S.C. 202 note), effective June 20, 1949.

P.L. 91-648, § 208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary of Health, Education, and Welfare under clause (A). See P.L. 91-648, § 208(a)(3)(D), in Vol. II, p. 1598. Functions vested in the U.S. Civil Service Commission were transferred to the Director of the Office of Personnel Management by section 102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. 1101 note).

The Secretary of Health, Education, and Welfare was redesignated, effective May 4, 1980, as the Secretary of Health and Human Services under section 509 of the Department of Education Reorganization Act (P.L. 96-68, 93 Stat. 695).

[8] See P.L. 79-396 (National School Lunch Act), § 12(e), with respect to exclusion from income and resources of assistance to children under that act, in Vol. II, p. 1526.

See P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing, in Vol. II, p. 1527.

See P.L. 88-525 (Food Stamp Act of 1977), § 8, with respect to exclusion from income and resources of the value of food stamps, in Vol. II, p. 1422.

See P.L. 89-642 (Child Nutrition Act of 1966), § 11(b), with respect to exclusion from income and resources of the value of assistance to children under that act, in Vol. II, p. 1576.

See P.L. 90-248 (Social Security Amendments of 1967), § 248(c), effective July 1, 1969, with respect to income disregards applicable to Guam, Puerto Rico, and the Virgin Islands, in Vol. II, p. 1445.

See P.L. 90-575 (Higher Education Amendments of 1968), § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), § 216, with respect to exclusion from income of payments made under that act, in Vol. II, p. 1597.

See P.L. 92-203 (Alaska Native Claims Settlement Act), § 29(b), with respect to exclusion from income of income and other benefits under that act in determining eligibility for food stamps, in Vol. II, p. 1457.

See P.L. 92-254, § 4, with respect to exclusion from income and resources of funds distributed per capita to Blackfeet and Gros Ventre Tribes of Indians, in Vol. II, p. 1601.

See P.L. 93-86 (Agriculture and Consumer Protection Act of 1973), § 4(c), with respect to the effect of receipt of Supplemental Security Income benefits (under title XVI of this act) in determining eligibility for food stamps of other members of the household, in Vol. II, p. 1607.

See P.L. 93-112 (Rehabilitation Act of 1973), § 613(c), with respect to conditional exclusion of wages, allowances, transportation reimbursement, and attendant care costs, in Vol. II, p. 1489.

See P.L. 93-113 (Domestic Volunteer Service Act of 1973), § 404(g), with respect to exclusion from income and resources of payments to volunteers under that act, in Vol. II, p. 1610.

See P.L. 93-134, § 7, with respect to exclusion from income and resources of funds distributed per capita or held in trust for Indians in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims, in Vol. II, p. 1611.

See P.L. 93-203 (Comprehensive Employment and Training Act of 1973), § 446, with respect to exclusion from income and resources of earnings and allowances received by a youth under

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(A) shall with respect to any month disregard—

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 432(b)(2) and (3)); and

(B)(i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of—

(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person—

Youth Employment Demonstration Programs in determining eligibility of the youth's family for, and the amount of, benefits, in Vol. II, p. 1612.

See P.L. 93-531, § 22, with respect to an exclusion from income and resources of settlement of Hopi and Navajo Tribes rights, in Vol. II, p. 1626.

See P.L. 93-647 (Social Services Amendments of 1974), § 101(c)(1), effective August 1, 1975, with respect to a disregard deemed to be in the State plan, in Vol. II, p. 1645.

See P.L. 94-114, § 6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians, in Vol. II, p. 1654.

See P.L. 94-164 (Revenue Adjustment Act of 1975), § 2(d), with respect to exclusion from income and resources of certain Federal income tax credits/refunds before January 1, 1980, in Vol. II, p. 1654.

See P.L. 94-189, § 6, with respect to exclusion from income and resources of funds distributed or held in trust for Sac and Fox Tribe, in Vol. II, p. 1657.

See P.L. 94-540, § 6, with respect to exclusion from income and resources of funds distributed per capita or held in trust for the Grand River Band of Ottawa Indians in Indian Claims Commission Docket numbered 40-K, in Vol. II, p. 1668.

See P.L. 95-171, § 10(d), for exclusion from income of certain income related to putting sitters in touch with individuals who wished to employ them, in Vol. II, p. 1679.

See P.L. 95-433, § 2, with respect to exclusion from income and resources of judgment funds awarded by Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation, and to the Apache Tribe of the Mescalero Reservation, in Vol. II, p. 1695.

See P.L. 95-498, § 6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico, in Vol. II, p. 1697.

See P.L. 95-499, § 6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico, in Vol. II, p. 1697.

See P.L. 95-557 (Housing and Community Development Amendments of 1978), § 410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the Housing Act of 1959 (see P.L. 86-372, § 202, in Vol. II, p. 1543), in Vol. II, p. 1698.

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; or

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan; or

(E) any of the persons specified in clause (ii) of subparagraph (A) with respect to which there is a failure without good cause to make a timely report (as prescribed by the State plan) to the State agency; [9]

(9) provide safeguards which restrict the use of [9A] disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part B, C, or D of this title or under title I, X, XIV, XVI, XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; [10] (10) provide, effective July 1, 1951, that all

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[9] P.L. 96-272, § 302(a)(2), added subparagraph (E), effective June 17, 1980.

[9A] As in original. Should be "or".

[10] See P.L. 82-183, § 618, with respect to condition under which grant-in-aid or other payment may not be withheld (Jenner Amendment), in Vol. II, p. 1528.

P.L. 93-647, § 101(c)(2), amended paragraph (9) in its entirety, effective July 1, 1975. For paragraph (9) as it formerly read, see Vol. II, p. 1762.

P.L. 94-46, § 2, effective June 30, 1975, changed that July 1, 1975, effective date to August 1, 1975.

P.L. 94-88, § 207, amended paragraph (9) in its entirety, effective August 1, 1975. For paragraph (9) as it read prior to P.L. 94-88, see Vol. II, p. 1774.

P.L. 96-265, § 403(a)(2), deleted "; and the safeguards so provided shall prohibit disclosure, to any committee or a legislative body, of any information which identifies by name or address any such applicant or recipient;" and inserted ", and (D) any audit or similar activity conducted in

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individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26),[11] be furnished with reasonable promptness to all eligible individuals; (11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this title) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established); [12] (12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act; [(13) Repealed. (14) Repealed.][13] (15) provide as part of the program of the State for the provision of services under title XX [14] (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in

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connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient;", effective September 1, 1980.

[11] P.L. 93-647, § 101(c)(3), added ", subject to paragraphs (25) and (26),", effective July 1, 1975.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[12] P.L. 93-647, § 101(c)(4), amended paragraph (11) in its entirety, effective July 1, 1975. For paragraph (11) as it formerly read, see Vol. II, p. 1762.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[13] P.L. 93-647, § 3(a)(2), deleted paragraphs (13) and (14), effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that in the case of Guam, Puerto Rico, and the Virgin Islands, paragraphs (13) and (14) are not repealed but continue to read as follows:

"(13) provide a description of the services which the State agency makes available to maintain and strengthen family life for children, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

"(14) provide for the development and application of a program for such family services as defined in section 406(d) and child welfare services, as defined in section 425, for each child and relative who receives aid to families with dependent children and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)), as may be necessary in the light of the particular home conditions and other needs of such child, relative, and individuals, in order to assist such child, relative, and individuals to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development;".

[14] P.L. 93-647, § 3(a)(8), added "as part of the program of the State for the provision of services under title XX", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that in the case of Guam, Puerto Rico, and the Virgin Islands, paragraph (15) continues to read as follows:

"(15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this clause or clause (14) are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;".

making the determination under clause (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) [14A] family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services[14A], but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this clause or clause (14) are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services; (16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have; [15] [(17) Repealed. (18) Repealed.] [16] (19) provide—

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, employment, and other employment-related activities (including employment search, not to exceed eight weeks in total in each year) with the Secretary of Labor as provided by regulations issued by him, unless such individual is—[17]

(i) a child who is under age 16 or attending school full time;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

[14A] Phrases "(including minors" through "sexually active)" and "and are provided promptly" through "requesting such services" have been executed as amendments to clause (A), rather than clause (B), reflecting probable intent of Congress. See § 299E(c) of P.L. 92-603 (86 Stat. 1462).

[15] See P.L. 95-608, §§ 2-113, with respect to Indian child welfare, in Vol. II, p. 1700.

[16] P.L. 93-647, § 101(c)(8), repealed paragraphs (17) and (18), effective July 1, 1975. For paragraphs (17) and (18) as they formerly read, see Vol. II, p. 1762.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[17] P.L. 96-265, § 401(a)(1), deleted "that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is—" and substituted "that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, employment, and other employment-related activities (including employment search, not to exceed eight weeks in total in each year) with the Secretary of Labor as provided by regulations issued by him, unless such individual is—", effective on September 30, 1980, and the joint regulations referred to in § 402(a)(19)(F) of the Social Security Act (as amended by P.L. 96-265, § 401(d)) shall be promulgated on or before September 30, 1980, and take effect on that date.

(v) a mother or other relative of a child under the age of six who is caring for the child;

(vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor [18] to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph); or

(vii) a person who is working not less than 30 hours per week; [19]

and that any individual referred to in clause (v) shall be advised of her option to register, if she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register;

(B) that aid to families with dependent children [20] under the plan will not be denied by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph, or by reason of an individual's participation on a project under the program established by section 432(b)(2) or (3);

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 10 per centum of the cost of such programs, as specified in section 435(b); [21]

(D) that (i) training incentives authorized under section 434 [22] shall be disregarded in determining the needs of an individual under section 402(a)(7), and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 432(b)(2) or (3) shall be taken into account;

[(E) Repealed.] [23]

(F) that if (and for such period as is prescribed under joint regulations of the Secretary and the Secretary of Labor) any child, relative or individual [24] has been found by the Secretary of Labor under section 433(g) to have refused without good cause to participate under a work incentive program estab-

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[18] P.L. 96-265, § 401(a)(3), deleted "under section 433(g)", effective on September 30, 1980, and the joint regulations referred to in § 402(a)(19)(F) of the Act (as amended by P.L. 96-265, § 401(d)) shall be promulgated on or before September 30, 1980, and take effect on that date.

[19] P.L. 96-265, § 401(a)(5), added clause (vii), effective as indicated in footnote 18 of this title.

[20] P.L. 96-265, § 401(b), added "to families with dependent children", effective September 30, 1980, and the joint regulations referred to in § 402(a)(19)(F) of the Act (as amended by P.L. 96-265, § 401(d)) shall be promulgated on or before September 30, 1980, and take effect on such date.

[21] See P.L. 95-30, § 401(a), with respect to the work incentive program, in Vol. II, p. 1674.

[22] P.L. 96-265, § 401(c), deleted ", and income derived from a special work project under the program established by section 432(b)(3)", effective June 9, 1980.

[23] P.L. 92-223, § 3(a)(5), effective July 1, 1972.

[24] P.L. 96-265, § 401(d)(1), deleted "and for so long as any child, relative, or individual (certified to the Secretary of Labor pursuant to subparagraph (G))" and inserted "(and for such period as is prescribed under joint regulations of the Secretary and the Secretary of Labor) any child, relative or individual", effective June 9, 1980.

lished by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 406(b)(2) (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 408 will be made;

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7); [25]

(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit (which will, to the maximum extent feasible, be located in the same facility as that utilized for the administration of programs established pursuant to section 432(b)(1), (2), or (3)) [26] and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A) of this paragraph [26A] (I) [27], in accordance with the order of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive

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[25] P.L. 96-265, § 401(d)(2), inserted "and" and deleted from § 402(a)(19)(F) "except that the State agency shall for a period of sixty days, make payments of the type described in section 406(b)(2) (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor; and", effective June 9, 1980.

P.L. 96-265, § 401(f)(1), deleted that "and", effective September 30, 1980, and the joint regulations referred to in § 402(a)(19)(F) of the Act (as amended by P.L. 96-265, § 401(d)) shall be promulgated on or before September 30, 1980, and take effect on that date.

[26] P.L. 96-265, § 401(e)(1), added "(which will, to the maximum extent feasible, be located in the same facility as that utilized for the administration of programs established pursuant to section 432(b)(1), (2), or (3))", effective September 30, 1980, and the joint regulations referred to in § 402(a)(19)(F) of the Act (as amended by P.L. 96-265, § 401(d)) shall be promulgated on or before September 30, 1980, and take effect on that date.

[26A] As in original. Should be punctuation to signal beginning of a series.

[27] P.L. 96-265, § 401(e)(2), added "of this paragraph (I)", effective as indicated in footnote 26 of this title.

manpower training provided under section 432(b)(1), (2), or (3) [28], and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under section 432(b)(1), (2), or (3), (II) such social and supportive services as are necessary to enable such individuals as determined appropriate by the Secretary of Labor actively to engage in other employment-related (including but not limited to employment search) activities, as well as timely payment for necessary employment search expenses, and (III) for a period deemed appropriate by the Secretary of Labor after such an individual accepts employment, such social and supportive services as are reasonable and necessary to enable him to retain such employment,[29] (iii) will participate in the development of operational and employability plans under section 433(b); and (iv) provides for purposes of clause (ii), that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available; [30] and

(H) that an individual participating in employment search activities shall not be referred to employment opportunities which do not meet the criteria for appropriate work and training to which an individual may otherwise be assigned under section 432(b)(1), (2), or (3); [31]

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this title; [32] [(21) Repealed. (22) Repealed.][33] (23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted; (24) provide that [34] if an individual is

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[28] P.L. 96-265, § 401(e)(3), deleted "part C" and inserted "section 432(b)(1), (2), or (3)", effective as indicated in footnote 26 of this title.

[29] P.L. 96-265, § 401(e)(4), deleted "employment or training under part C," and inserted "employment or training under section 432(b)(1), (2), or (3), (II) such social and supportive services as are necessary to enable such individuals as determined appropriate by the Secretary of Labor actively to engage in other employment-related (including but not limited to employment search) activities, as well as timely payment for necessary employment search expenses, and (III) for a period deemed appropriate by the Secretary of Labor after such an individual accepts employment, such social and supportive services as are reasonable and necessary to enable him to retain such employment," effective September 30, 1980, and the joint regulations referred to in § 402(a)(19)(F) of the Act (as amended by P.L. 96-265, § 401(d)) shall be promulgated on or before September 30, 1980, and take effect on that date.

[30] See P.L. 93-233, § 12, with respect to postponement of social services regulations, in Vol. II, p. 1615.

See P.L. 95-30, § 401(a), with respect to the work incentive program, in Vol. II, p. 1674.

[31] P.L. 96-265, § 401(f)(3), added subparagraph (H), effective as indicated in footnote 29 of this title.

[32] P.L. 96-272, § 101(a)(3)(A), amended paragraph (20) in its entirety, effective with respect to any State at the same time as the repeal of § 408 becomes effective with respect to that State (see P.L. 96-272, § 101(a)(2), for the effective date of the repeal of § 408, in Vol. II, p. 1507.) For paragraph (20) as it formerly read, see Vol. II, p. 1828.

See P.L. 95-608, §§ 2-113, with respect to Indian child welfare, in Vol. II, p. 1700.

[33] P.L. 93-647, § 101(c)(8), repealed paragraphs (21) and (22), effective July 1, 1975. For paragraphs (21) and (22) as they formerly read, see Vol. II, p. 1762.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[34] P.L. 93-647, § 101(c)(5)(B), inserted "provide that", effective July 1, 1975.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

receiving benefits under title XVI, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title and his income and resources shall not be counted as income and resources of a family under this title; (25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan;[35] (26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed,

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed;[36] and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) (without regard to subparagraphs (A) through (E) of such section);[37] [38]

(27) provide[39] that the State has[40] in effect a plan approved under part D and operate a child support program in conformity with such plan;[37] [38] (28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D, and retained by the State under

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[35] P.L. 93-647, § 101(c)(5)(C), added paragraph (25), effective July 1, 1975.
P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[36] P.L. 94-88, § 208(a), added ", unless (in either case such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed;", effective August 1, 1975.

[37] P.L. 93-647, § 101(c)(5), added paragraphs (26) and (27), effective July 1, 1975.
P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[38] See P.L. 94-88, § 201 regarding reports to Congress on temporary waivers of certain requirements for certain States, § 203 regarding support assignments, and § 208(d) regarding submittal to Congress of proposed standards, in Vol. II, p. 1650.

[39] P.L. 96-473, § 6(f)(1), deleted "provide," and substituted "provide", effective October 19, 1980.

[40] P.L. 94-88, § 209, deleted "States have" and substituted "State has", effective August 1, 1975.

section 457, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part; [41] (29) effective October 1, 1979, provide [42] that wage information available from the Social Security Administration under the provisions of section 411 of this Act, and wage information available (under the provisions of section 3304(a)(16) of the Federal Unemployment Tax Act [43]) from agencies administering State unemployment compensation laws, shall be requested and utilized to the extent permitted under the provisions of such sections; except that the State shall not be required to request such information from the Social Security Administration where such information is available from the agency administering the State unemployment compensation laws; and [44] (30) at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under subsection (d), of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part, so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this Act), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system.[45]

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which

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[41] P.L. 94-88, § 202, added paragraph (28), effective August 1, 1975.

[42] P.L. 96-473, § 6(f)(2), deleted "provided" and substituted "provide", effective October 19, 1980.

[43] See Internal Revenue Code of 1954, § 3304(a)(16), in Vol. I, p. 745.

[44] P.L. 95-216, § 403(c), added paragraph (29), effective December 20, 1977.

[45] P.L. 96-265, § 406(b)(1)(C), added paragraph (30), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

(c) The Secretary shall, on the basis of his review of the reports received from the States under clause (15) of subsection (a), compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such clause. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such clause (15).

(d)(1) For purposes of paragraphs (7) and (8) of subsection (a), any refund of Federal income taxes made by reason of section 43 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income.

(2) In any case in which such advance payments for a taxable year made by all employers to an individual under section 3507 of such Code exceed the amount of such individual's earned income credit allowable under section 43 of such Code for such year, so that such individual is liable under section 43(g) of such Code for a tax equal to such excess, such individual's benefit amount must be appropriately adjusted so as to provide payment to such individual of an amount equal to the amount of the benefits lost by such individual on account of such excess advance payments.[46]

(e)(1) The Secretary shall not approve the initial and annually updated advance automatic data processing planning document, referred to in subsection (a)(30), unless he finds that such document, when implemented, will generally carry out the objectives of the statewide management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed statewide management system, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such statewide management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) includes cost-benefit analyses of each alternative management system, data processing services and equipment, and a cost allocation plan containing the basis for rates, both direct

[46] P.L. 96-222, § 101(a)(2)(A), added subsection (d), effective with respect to payments for months beginning after December 31, 1979.

and indirect, to be in effect under such statewide management system,

(F) contains an implementation plan with charts of development events, testing descriptions, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of contingencies, and

(G) contains a summary of proposed improvement of such statewide management system in terms of qualitative and quantitative benefits.

(2)(A) The Secretary shall, on a continuing basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems referred to in section 403(a)(3)(B), with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under such section and the conditions specified under subsection (a)(30) of this section.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 403(a)(3)(B) that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.[47]

PAYMENT TO STATES [48]

SEC. 403. [42 U.S.C. 603] (a) From the sums appropriated therefor, the Secretary of the Treasury shall [49] pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $18 multiplied by the total number of recipients of aid to families with dependent children for

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[47] P.L. 96-265, § 406(b)(2), added a second subsection (d), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

P.L. 96-473, § 6(f)(3), redesignated this second subsection (d) as subsection (e), effective October 19, 1980.

[48] See 29 U.S.C. 49-49n (Wagner-Peyser Act), with respect to the United States Employment Service, in Vol. II, p. 1181.

See P.L. 95-291, §§ 1-6, with respect to reimbursement of States for social services provided prior to October 1, 1975, in Vol. II, p. 1692.

[49] P.L. 93-647, § 3(e)(2), deleted "(subject to section 1130)", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975.

such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii), with respect to whom payments described in section 406(b)(2) are made in such month and included as expenditures for purposes of this paragraph or paragraph (2)); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $18 multiplied by the total number of recipients of such aid for such month; and [50]

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,[51]

(B) 90 per centum of so much of the sums expended during such quarter as are attributable to the planning, design, development, or installation of such statewide mechanized claims processing and information retrieval systems as (i) meet the conditions of section 402(a)(30), and (ii) the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and

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[50] See §§ 1108 and 1118 of Social Security Act.

[51] See P.L. 81-474, § 9 (25 U.S.C. 639), with respect to payments for the Navajo and Hopi Indian tribes, in Vol. II, p. 1528.

See P.L. 93-233, § 12, with respect to postponement of social services regulations, in Vol. II, p. 1615.

See P.L. 95-30, § 401(a), with respect to the work incentive program, in Vol. II, p. 1674.

information retrieval systems utilized in the administration of State plans approved under title XIX, and State programs with respect to which there is Federal financial participation under title XX, and [52]

(C) [53] one-half of the remainder of such expenditures, except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 2002(a)(1) of this Act other than services the provision of which is required by section 402(a)(19) to be included in the plan of the State; and [54]

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[52] P.L. 96-265, § 406(a)(3), added subparagraph (B), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

[53] P.L. 96-265, § 406(a)(2), redesignated subparagraph (B) as subparagraph (C), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

[54] P.L. 93-647, § 3(a)(3), amended paragraph (3) in its entirety, effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that in the case of Guam, Puerto Rico, and the Virgin Islands, § 403(a)(3) still reads as follows:

"(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

"(A) 75 per centum of so much of such expenditures as are for—

"(i) any of the services described in clauses (14) and (15) of section 402(a) which are provided to any child or relative who is receiving aid under the plan, or to any other individual (living in the same home as such relative and child) whose needs are taken into account in making the determination under clause (7) of such section,

"(ii) any of the services described in clauses (14) and (15) of section 402(a) which are provided to any child or relative who is applying for aid to families with dependent children or who, within such period or periods as the Secretary may prescribe, has been or is likely to become an applicant for or recipient of such aid,

"(iii) the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) [54A] of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

"(B) one-half of the remainder of such expenditures.

The services referred to in subparagraph (A) shall include only—

"(C) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this part shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (D), if provided by such staff, and

"(D) under conditions which shall be prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (C) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved; and except that, to the extent specified by the Secretary, child-welfare services, family planning services, and family services may be provided from sources other than those referred to in subparagraphs (C) and (D). The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraph (B) applies shall be determined in accordance with such methods and procedures as may be permitted by the Secretary.".

For paragraph (3) as it formerly read, see Vol. II, p. 1763.

[54A] P.L. 93-647, § 5(b), added "(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)", effective with respect to payments for quarters commencing after September 30, 1975.

See P.L. 90-248, § 248(b), with respect to the rates applicable to Puerto Rico, the Virgin Islands, and Guam, in Vol. II, p. 1445.

[(4) Repealed.] [55]

(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.

The number of individuals with respect to whom payments described in section 406(b)(2) are made for any month, who may be included as recipients of aid to families with dependent children for purposes of paragraph (1) or (2), may not exceed 20 [56] per centum of the number of other recipients of aid to families with dependent children for such month. In computing such 20 [56] percent, there shall not be taken into account individuals with respect to whom such payments are made for any month in accordance with section 402(a)(19)(F) or section 402(a)(26) [57].

In the case of calendar quarters beginning after September 30, 1977, and prior to April 1, 1978, the amount to be paid to each State (as determined under the preceding provisions of this subsection or section 1118, as the case may be) shall be increased in accordance with the provisions of subsection (i) of this section.[58]

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarters, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such

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[55] P.L. 90-248, § 201(e)(3), effective January 2, 1968.

[56] P.L. 95-171, § 3(a)(1), deleted "10" and substituted "20", effective with respect to payments of aid to families with dependent children made for months beginning on or after October 1, 1977.

[57] P.L. 94-88, § 204, inserted "or section 402(a)(26)", effective August 1, 1975.

[58] See P.L. 81-474, § 9 (25 U.S.C. 639), with respect to additional amounts payable by the Secretary of the Treasury to the States with respect to Navajo and Hopi Indians, in Vol. II, p. 1528.

See P.L. 93-233, § 12, regarding the postponement of social services regulations, in Vol. II, p. 1615.

See P.L. 94-566, § 508, regarding reimbursement of expenses, in Vol. II, p. 1673.

See P.L. 95-30, § 505, regarding expenditures by the State of Georgia, in Vol. II, p. 1675.

jointly to the order of the recipient and the person furnishing goods or services, in Vol. II, p. 1678.

P.L. 95-216, § 401(1), added the preceding paragraph, effective December 20, 1977.

quarter, (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan, and (C) reduced by such amount as is necessary to provide the "appropriate reimbursement of the Federal Government" that the State is required to make under section 457 out of that portion of child support collections retained by it pursuant to such section [59]; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) Notwithstanding any other provision of this Act, the Federal share of assistance payments under this part shall be reduced with respect to any State for any fiscal year after June 30, 1973, by one percentage point for each percentage point by which the number of individuals certified, under the program of such State established pursuant to section 402(a)(19)(G), to the local employment office of the State as being ready for employment or training under section 432(b)(1), (2), or (3) [60], is less than 15 per centum of the average number of individuals in such State who, during such year, are required to be registered pursuant to section 402(a)(19)(A).[61]

(d)(1) Notwithstanding subparagraph (A) of subsection (a)(3) the rate specified in such subparagraph shall be 90 per centum (rather than 75 per centum) with respect to social and supportive services provided pursuant to section 402(a)(19)(G). In determining the amount of the expenditures made under a State plan for any quarter with respect to social and supportive services pursuant to section 402(a)(19)(G), there shall be included the fair and reasonable value of goods and services furnished in kind from the State or any political subdivision thereof.[62]

(2) Of the sums authorized by section 401 to be appropriated for the fiscal year ending June 30, 1973, not more than $750,000,000 shall be appropriated to the Secretary for payments with respect to services to which paragraph (1) applies.[63]

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[59] P.L. 96-265, § 407(c)(2), added ", and (C) reduced by such amount as is necessary to provide the 'appropriate reimbursement of the Federal Government' that the State is required to make under section 457 out of that portion of child support collections retained by it pursuant to such section", effective in the case of calendar quarters commencing on or after January 1, 1981.

[60] P.L. 96-265, § 401(g), deleted "part C" and inserted "section 432(b)(1), (2), or (3)", effective September 30, 1980, and the joint regulations referred to in § 402(a)(19)(F) of the Act (as amended by P.L. 96-265, § 401(d)) shall be promulgated on or before September 30, 1980, and take effect on that date.

[61] P.L. 94-274, § 204(7), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975.

[62] P.L. 96-265, § 401(h), added the preceding sentence, effective as indicated in footnote 60 of this title.

[63] See P.L. 95-30, § 401(a), with respect to the work incentive program, in Vol. II, p. 1674.

[(e) Repealed.] [64]

(f) Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1973, be reduced by 1 per centum (calculated without regard to any reduction under section 403(g)) of such amount if such State—

(1) in the immediately preceding fiscal year failed to carry out the provisions of section 402(a)(15)(B) as pertain to requiring the offering and arrangement for provision of family planning services; or

(2) in the immediately preceding fiscal year (but, in the case of the fiscal year beginning July 1, 1972, only considering the third and fourth quarters thereof), failed to carry out the provisions of section 402(a)(15)(B) of the Social Security Act with respect to any individual who, within such period or periods as the Secretary may prescribe, has been an applicant for or recipient of aid to families with dependent children under the plan of the State approved under this part.[65]

(g) Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1974, be reduced by 1 per centum (calculated without regard to any reduction under section 403(f)) of such amount if such State fails to—

(1) inform all families in the State receiving aid to families with dependent children under the plan of the State approved under this part of the availability of child health screening services under the plan of such State approved under title XIX,

(2) provide or arrange for the provision of such screening services in all cases where they are requested, or

(3) arrange for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services.[66]

(h) Notwithstanding any other provision of this Act, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 402(a)(27) in any fiscal year beginning after September 30, 1976

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[64] P.L. 93-647, § 3(a)(4), repealed subsection (e), effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that in the case of Guam, Puerto Rico, and the Virgin Islands, subsection (e) continues to read as follows: "(e) Notwithstanding any other provision of subsection (a), with respect to expenditures during any calendar quarter beginning after December 31, 1972 (as found necessary by the Secretary for the proper and efficient administration of the plan) which are attributable to the offering, arranging, and furnishing, directly or on a contract basis, of family planning services and supplies, the amount payable to any State under this part shall be 90 per centum of such expenditures.".

[65] P.L. 94-274, § 204(7), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975.

[66] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year.

(but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof).[67]

(i)(1) In the case of any calendar quarter which begins after September 30, 1977, and prior to April 1, 1978, the amount payable (as determined under subsection (a) or section 1118, as the case may be) to each State which has a State plan approved under this part shall (subject to the succeeding paragraphs of this subsection) be increased by an amount equal to the sum of the following:

(A) an amount which bears the same ratio to $46,750,000 as the amount expended as aid to families with dependent children under the State plan of such State during the month of December 1976 bears to the amount expended as aid to families with dependent children under the State plans of all States during such month, and

(B)(i) in the case of Puerto Rico, Guam, and the Virgin Islands, an amount equal to the amount determined under subparagraph (A) with respect to such State, or

(ii) in the case of any other State, an amount which bears the same ratio to $46,750,000, minus the amounts determined under clause (i) of this subparagraph, as the amount allocated to such State under section 106 of the State and Local Fiscal Assistance Act of 1972[68], for the most recent entitlement period for which allocations have been made under such section prior to the date of the enactment of this subsection[69], bears to the total of the amounts allocated to all States under such section 106 for such period.

(2) As a condition of any State receiving an increase, by reason of the application of the foregoing provisions of this subsection, in the amount determined for such State pursuant to subsection (a) or under section 1118 (as the case may be), such State must agree to pay to any political subdivision thereof which participates in the cost of the State's plan approved under this part, during any calendar quarter with respect to which such increase applies, so much of such increase as does not exceed 100 per centum of such political subdivision's financial contribution to the State's plan for such quarter.

(3) Notwithstanding any other provision of this part, the amount payable to any State by reason of the preceding provisions of this subsection for calendar quarters prior to April 1, 1978, shall be made in a single installment, which shall be payable as shortly after October 1, 1977, as is administratively feasible.[69]

(j) If the dollar error rate of aid furnished by a State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is—

(1) at least 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carry-

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[67] P.L. 93-647, § 101(c)(6)(A), added subsection (h), effective July 1, 1975.
P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.
See P.L. 96-272, § 309, with respect to postponement of imposition of certain penalties relating to child support requirements, in Vol. II, p. 1509.

[68] See 31 U.S.C. 1225 for § 106 of State and Local Fiscal Assistance Act of 1972 (P.L. 92-512), in Vol. II, p. 1196.

[69] P.L. 95-216, § 401(2), enacted and effective December 20, 1977, added subsection (i).

ing out such plan during such period shall be determined without regard to the provisions of this subsection; or

(2) less than 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be the amount determined without regard to this subsection, plus, of the amount by which such expenditures are less than they would have been if the erroneous excess payments of aid had been at a rate of 4 per centum—

(A) 10 per centum of the Federal share of such amount, in case such rate is not less than 3.5 per centum,

(B) 20 per centum of the Federal share of such amount, in case such rate is at least 3.0 per centum but less than 3.5 per centum,

(C) 30 per centum of the Federal share of such amount, in case such rate is at least 2.5 per centum but less than 3.0 per centum,

(D) 40 per centum of the Federal share of such amount, in case such rate is at least 2.0 per centum but less than 2.5 per centum,

(E) 50 per centum of the Federal share of such amount, in case such rate is less than 2.0 per centum.

For purposes of this subsection (i) the term "dollar error rate of aid" means the total of the dollar error rates of aid for (I) payments to ineligible families receiving assistance; (II) overpayments to eligible families receiving assistance; (III) underpayments to eligible families receiving assistance; and (IV) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials, and (ii) the term "erroneous excess payments,[69A]" means the total of (I) erroneous payments to ineligible families receiving assistance, and (II) overpayments to eligible families receiving assistance.[70]

OPERATION OF STATE PLANS

SEC. 404. [42 U.S.C. 604] (a) In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such

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[69A] As in original.

[70] P.L. 95-216, § 402(a), added subsection (j), effective only in the case of periods commencing on or after January 1, 1978.

prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(b) No payment to which a State is otherwise entitled under this title for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this part with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child.

(c) No State shall be found, prior to January 1, 1977, to have failed substantially to comply with the requirements of section 402(a)(27) if, in the judgment of the Secretary, such State is making a good faith effort to implement the program required by such section.[71]

(d) After December 31, 1976, in the case of any State which is found to have failed substantially to comply with the requirements of section 402(a)(27), the reduction in any amount payable to such State required to be imposed under section 403(h) shall be imposed in lieu of any reduction, with respect to such failure, which would otherwise be required to be imposed under this section.[71]

USE OF PAYMENTS FOR BENEFIT OF CHILD [72]

SEC. 405. [42 U.S.C. 605] Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 406(b)(2), or in seeking appointment of a guardian or legal representative as provided in section 1111, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 404 and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.

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[71] P.L. 93-647, § 101(c)(6)(B), added subsections (c) and (d), effective July 1, 1975.
P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[72] See P.L. 95-608, §§ 2-113, with respect to Indian child welfare, in Vol. II, p. 1700.

DEFINITIONS

SEC. 406. [42 U.S.C. 606] When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) at the option of the State,[73] under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment, or (C) at the option of the State, under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school in grade twelve or below or regularly attending a course of vocational or technical training, other than a course provided by or through a college or university, designed to fit him for gainful employment [74];

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 407), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 402(a)(7)) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 402 includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it

[73] P.L. 96-611, § 4(1), added "at the option of the State," effective, December 28, 1980.
[74] P.L. 96-611, § 4(2), added subparagraph (C), effective December 28, 1980.

is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 408(a); and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the purposes of this part to be payments described in clause (2).[75] Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision.[75]

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

[(d) Repealed.] [76]

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in

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[75] P.L. 95-171, § 3(a)(2), added the preceding sentence, effective with respect to payments of aid to families with dependent children made for months beginning on or after October 1, 1977. See P.L. 95-171, § 3(b), with respect to the provision of goods or services by check drawn to the order of the recipient and the person supplying goods or services, in Vol. II, p. 1678.

[76] P.L. 93-647, § 3(a)(5), deleted subsection (d), effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that in the case of Puerto Rico, Guam, and the Virgin Islands, subsection (d) still reads as follows: "(d) The term 'family services' means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.".

excess of 30 days in any 12-month period, in the case of a needy child under the age of 21, who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 402 includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

(f) Notwithstanding the provisions of subsection (b), the term "aid to families with dependent children" does not mean payments with respect to a parent (or other individual whose needs such State determines should be considered in determining the need of the child or relative claiming aid under the plan of such State approved under this part) of a child who fails to cooperate with any agency or official of the State in obtaining such support payments for such child. Nothing in this subsection shall be construed to make an otherwise eligible child ineligible for protective payments because of the failure of such parent (or such other individual) to so cooperate.[77]

DEPENDENT CHILDREN OF UNEMPLOYED FATHERS

SEC. 407. [42 U.S.C. 607] (a) The term "dependent child" shall, notwithstanding section 406(a), include a needy child who meets the requirements of section 406(a)(2), who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 406(a)(1) in a place of residence maintained by one or more of such relatives as his (or their) own home.

(b) The provisions of subsection (a) shall be applicable to a State if the State's plan approved under section 402—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) when—

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[77] P.L. 93-647, § 101(c)(7), added subsection (f), effective July 1, 1975.
P.L. 94-46, § 2, effective June 30, 1975, changed that July 1, 1975, effective date to August 1, 1975.

(A) such child's father has not been employed (as determined in accordance with the standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(C)(i) such father has 6 or more quarters of work (as defined in subsection (d)(1)) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3)) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides—

(A) for such assurances as will satisfy the Secretary that fathers of dependent children as defined in subsection (a) will be certified to the Secretary of Labor as provided in section 402(a)(19) within thirty days after receipt of aid with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained;

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a)—

(i) if and for so long as such child's father, unless exempt under section 402(a)(19)(A), is not registered pursuant to such section for the work incentive program established under part C of this title, or, if he is exempt under such section by reason of clause (iii) thereof or no such program in which he can effectively participate has been established or provided under section 432(a), is not registered with the public employment offices in the State, and

(ii) with respect to any week for which such child's father qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States, but refuses to apply for or accept such unemployment compensation; and [78]

(D) for the reduction of the aid to families with dependent children otherwise payable to any child or relative specified in subsection (a) by the amount of any unemployment compensation that such child's father receives under

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[78] P.L. 94-566, § 507(a), amended subparagraph (C) in its entirety and added subparagraph (D), effective with respect to months after (and weeks beginning in months after) October 20, 1976. For subparagraph (C) as it formerly read, see Vol. II, p. 1783.

an unemployment compensation law of a State or of the United States.[78]

(c) Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a), (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b)(1), or (ii) for any period prior to the time when the father satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b)(2)), under the program therein specified, to certify such father to the Secretary of Labor pursuant to section 402(a)(19).

(d) For purposes of this section—

(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2)), or in which such individual participated in a community work and training program under section 409 or any other work and training program subject to the limitations in section 409, or the work incentive program established under part C;

(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31; and

(3) an individual shall, for purposes of section 407(b)(1)(C),[79] be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

(A) he would have been eligible to receive such unemployment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application.

(e) The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly enter into an agreement with each State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed fathers and other unemployed persons in such State in registering pursuant to section 402(a)(19) for the work incentive program established by part C of this title and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the requirements of both the work incentive program and the applicable unemployment compensation laws.[80]

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[79] P.L. 94-566, § 507(b), added ", for purposes of section 407(b)(1)(C),", effective with respect to months after (and weeks beginning in months after) October 20, 1976.

[80] P.L. 94-566, § 507(d), added subsection (e), effective October 20, 1976.

[SEC. 408. Repealed.] [81]

COMMUNITY WORK AND TRAINING PROGRAMS

SEC. 409. [42 U.S.C. 609] (a) For the purpose of assisting the States in encouraging, through community work and training programs of a constructive nature, the conservation of work skills and the development of new skills for individuals who have attained the age of 18 and are receiving aid to families with dependent children, under conditions which are designed to assure protection of the health and welfare of such individuals and the dependent children involved, expenditures (other than for medical or any other type of remedial care) for any month with respect to a dependent child (including payments to meet the needs of any relative or relatives, specified in section 406(a), with whom he is living) under a State plan approved under section 402 shall not be excluded from aid to families with dependent children because such expenditures are made in the form of payments for work performed in such month by any one or more of the relatives with whom such child is living if such work is performed for the State agency or any other public agency under a program (which need not be in effect in all political subdivisions of the State) administered by or under the supervision of such State agency, if there is State financial participation in such expenditures, and if such State plan includes—

(1) provisions which, in the judgment of the Secretary, provide reasonable assurance that—

(A) appropriate standards for health, safety, and other conditions applicable to the performance of such work by such relatives are established and maintained;

(B) payments for such work are at rates not less than the minimum rate (if any) provided by or under State law for the same type of work and not less than the rates prevailing on similar work in the community;

(C) such work is performed on projects which serve a useful public purpose, do not result either in displacement of regular workers or in the performance by such relatives of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, and (except in cases of projects which involve emergencies or which are generally of a nonrecurring nature) are of a type which has not normally been undertaken in the past by the State or community, as the case may be;

(D) in determining the needs of any such relative, any additional expenses reasonably attributable to such work will be considered;

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[81] P.L. 96-272, § 101(a)(2)(A), repealed § 408, effective with respect to expenditures made after September 30, 1980, subject to subparagraph (B). See P.L. 96-272, § 101(a)(2)(B), in Vol. II, p. 1507. For § 408 as it formerly read, see Vol. II, p. 1828.

See P.L. 96-272, § 102(d)(2), with respect to voluntary removal of a child from a relative's home before October 1, 1979, in Vol. II, p. 1508.

See P.L. 96-272, § 102(e), with respect to the Secretary's report to Congress on the number of children placed in foster care pursuant to certain voluntary placement agreements, in Vol. II, p. 1509.

(E) any such relative shall have reasonable opportunities to seek regular employment and to secure any appropriate training or retraining which may be available;

(F) any such relative will, with respect to the work so performed, be covered under the State workmen's compensation law or be provided comparable protection; and

(G) aid under the plan will not be denied with respect to any such relative (or the dependent child) for refusal by such relative to perform any such work if he has good cause for such refusal;

(2) provision for entering into cooperative arrangements with the system of public employment offices in the State looking toward employment or occupational training of any such relatives performing work under such program, including appropriate provision for registration and periodic reregistration of such relatives and for maximum utilization of the job placement services and other services and facilities of such offices;

(3) provision for entering into cooperative arrangements with the State agency or agencies responsible for administering or supervising the administration of vocational education and adult education in the State, looking toward maximum utilization of available public vocational or adult education services and facilities in the State in order to encourage the training or retraining of any such relatives performing work under such program and otherwise assist them in preparing for regular employment;

(4) provision for assuring appropriate arrangements for the care and protection of the child during the absence from the home of any such relative performing work under such program in order to assure that such absence and work will not be inimical to the welfare of the child;

(5) provision that there will be no adjustment or recovery by the State or any political subdivision thereof on account of any payments which are correctly made for such work; and

(6) such other provisions as the Secretary finds necessary to assure that the operation of such program will not interfere with achievement of the objectives set forth in section 401.

(b) In the case of any State which makes expenditures in the form described in subsection (a) under its State plan approved under section 402, the proper and efficient administration of the State plan, for purposes of section 403(a)(3) and (4), may not include the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in subsection (a) or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary.

FOOD STAMP DISTRIBUTION [82]

SEC. 410. [42 U.S.C. 610] (a) Any State plan for aid and services to needy families with children may (but is not required under this

[82] P.L. 93-647, § 101(c)(8), effective July 1, 1975, repealed the former § 410 which related to Assistance by Internal Revenue Service in Locating Parents (see § 453). For § 410 as it formerly read, see Vol. II, p. 1763.

Continued

title or any other provision of Federal law to) provide for the institution of procedures, in any or all areas of the State, by the State agency administering or supervising the administration of such plan under which any household participating in the food stamp program established by the Food Stamp Act of 1964, as amended,[83] will be entitled, if it so elects, to have the charges, if any, for its coupon allotment under such program deducted from any aid, in the form of money payments, which is (or, except for the deduction of such charge, would be) payable to or with respect to such household (or any member or members thereof) under such plan and have its coupon allotment distributed to it with such aid.

(b) Any deduction made pursuant to an option provided in accordance with subsection (a) shall not be considered to be a payment described in section 406(b)(2).

(c) Notwithstanding any other provision of law, no agency which is designated as a State agency for any State under or pursuant to the Food Stamp Act of 1964, as amended,[83] shall be regarded as having failed to comply with any requirement imposed by or pursuant to such Act solely because of the failure, of the State agency administering or supervising the administration of the State plan (approved under this part) of such State, to institute or carry out a procedure, described in subsection (a).[84]

ACCESS TO WAGE INFORMATION [85]

SEC. 411. [42 U.S.C. 611] (a) Notwithstanding any other provision of law, the Secretary shall make available to States and political subdivisions thereof wage information contained in the records of the Social Security Administration which is necessary (as determined by the Secretary in regulations) for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved under this part, and which is specifically requested by such State or political subdivision for such purposes.

(b) The Secretary shall establish such safeguards as are necessary (as determined by the Secretary under regulations) to insure that information made available under the provisions of this section is used only for the purposes authorized by this section.

P.L. 94-46, § 2, effective June 30, 1975, changed the effective date of the repeal from July 1 to August 1, 1975.

P.L. 94-585, § 1(a), added the present § 410, effective October 21, 1976.

See P.L. 96-243, with respect to a Department of Agriculture study relating to restrictions based on income and resources, in Vol. II, p. 1735.

[83] P.L. 95-113, § 1301, effective October 1, 1977, amended the Food Stamp Act of 1964 in its entirety and renamed it the "Food Stamp Act of 1977". See P.L. 88-525 (Food Stamp Act of 1977), § 8 eliminating the requirement for purchase of food stamps, and § 11(i) providing that individuals applying for aid to families with dependent children or supplemental security income shall be permitted to apply at the same office, for participation in the food stamp program, and have their eligibility for food stamps determined on the basis of information furnished at those offices, in Vol. II, p. 1422.

[84] See P.L. 94-585, § 1(b), with respect to administrative costs in connection with the Food Stamp Act of 1964, in Vol. II, p. 1674.

See P.L. 88-525 (Food Stamp Act of 1977), in Vol. II, p. 1412.

[85] P.L. 95-216, § 403(a), added § 411, effective December 20, 1977.

PRORATING OF SHELTER ALLOWANCE IN CERTAIN CASES WHERE CHILD LIVES WITH RELATIVE NOT LEGALLY RESPONSIBLE FOR HIS SUPPORT [86]

SEC. 412. [42 U.S.C. 612] (a) Notwithstanding any other provision of this part, a State plan for aid and services to needy families with children shall not be regarded as failing to comply with the requirements imposed under this part solely because, under such plan, in any case in which one or more children live in any household—

(1)(A) in which the total income of such child or children and the closely related family members (as defined in subsection (b)) living in the same household equals or exceeds the standard of need under such plan for a family equal in number to the total number of such children and closely related family members in the same household, or (B) where the income of children and family members cannot be determined due to failure to cooperate, and

(2) which (A) does not include a relative (specified in section 406(a)(1)) who is legally responsible for the support of the child or children, or (B) includes one or more such relatives who is legally responsible for the support of the child or children but none of whom is eligible for aid under the State plan because such relative is being supported by another person or under another program,

the amount of the aid furnished with respect to such child or children for shelter, utilities, and similar expenses, bears the same ratio to the total amount which would be furnished for such expenses, if all the closely related family members with whom such child or children are living were eligible for such aid, as the number of such children bears to the total number of such children and closely related family members.

(b) For purposes of subsection (a), the term "closely related family members" of a child means those relatives of his who are specified in section 406(a)(1) and any other individual for whose support such a relative is legally responsible, but does not include any such relative or other individual (1) with respect to whom benefits are provided under another public program eligibility for which is based on need, or (2) whose presence in the home would not increase the total amount which would be allowed for shelter, utilities, and similar expenses if he was eligible for aid.

(c) The amount of aid to families with dependent children for shelter, utilities, and similar expenses shall be identified, for purposes of this section, in the following manner:

(1) If the State plan approved under this part provides for paying 100 per centum of the standard of need specified in the plan, and designates a portion of that standard, for families of specified sizes, to meet shelter, utilities, and similar expenses, then an amount equal to that portion shall be considered the total amount for such expenses for a family of the specified size.

(2) If such plan provides for meeting less than 100 per centum of such standard, and designates a portion of that standard, for families of specified sizes, to meet such expenses,

[86] P.L. 96-272, § 303, added § 412, effective June 17, 1980.

then an amount equal to that portion, multiplied by the proportion of the standard of need which such State pays as aid to families with dependent children, shall be considered the total amount for such expenses for a family of the specified size.

(3) If such plan does not designate any portion of the standard of need for meeting such expenses, then such portion shall be prescribed by the Secretary, but in no event shall such portion exceed 30 per centum of the standard of need for a family of a specified size, multiplied by the proportion of such standard which the State pays as aid to families with dependent children.

(d) For purposes of subsection (a), the total income of the child or children and the closely related family members (as defined in subsection (b)) shall be determined as it would be if all such individuals were applicants for aid under the State plan and shall not include any income which any such individual is obligated to apply to the support of any other individual not living in the household.

TECHNICAL ASSISTANCE FOR DEVELOPING MANAGEMENT INFORMATION SYSTEMS [87]

SEC. 413. [42 U.S.C. 613] The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of the management information systems referred to in section 403(a)(3)(B) of this Act.

PART B—CHILD WELFARE SERVICES [88]

APPROPRIATION [89]

SEC. 420. [42 U.S.C. 620] (a) For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services, there is authorized to be appropriated for each fiscal year the sum of $266,000,000.

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence, shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

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[87] P.L. 96-265, § 406(c), added § 413, effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

[88] See P.L. 95-608, § 201(b), with respect to Indian child welfare, in Vol. II, p. 1705.

See P.L. 96-272, § 103(d), with respect to the applicability of § 422(b)(1) in certain cases, in Vol. II, p. 1509.

See P.L. 96-272, § 103(f)(1), with respect to availability of fiscal year 1980 appropriation funds, in Vol. II, p. 1509.

[89] P.L. 96-272, § 103(a), amended § 420 in its entirety, effective June 17, 1980, except that subsection (b) shall apply only with respect to appropriation Acts, which appropriate funds for fiscal years after fiscal year 1981 pursuant to the authorization contained in § 420 enacted after June 17, 1980. For § 420 as it formerly read, see Vol. II, p. 1829.

ALLOTMENTS TO STATES [90]

SEC. 421. [42 U.S.C. 621] (a) The sum appropriated pursuant to section 420 for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary as follows: He shall first allot $70,000 to each State, and shall then allot to each State an amount which bears the same ratio to the remainder of such sum as the product of (1) the population of the State under the age of twenty-one and (2) the allotment percentage of the State (as determined under this section) bears to the sum of the corresponding products of all the States.

(b) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(c) The allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation.

(d) For purposes of this section, the term "United States" means the fifty States and the District of Columbia.

STATE PLANS FOR CHILD WELFARE SERVICES [91]

SEC. 422. [42 U.S.C. 622] (a) In order to be eligible for payment under this part, a State must have a plan for child welfare services which has been developed jointly by the Secretary and the State agency designated pursuant to subsection (b)(1), and which meets the requirements of subsection (b).

(b) Each plan for child welfare services under this part shall—

(1) provide that (A) the individual or agency designated pursuant to section 2003(d)(1)(C) to administer or supervise the administration of the State's services program will administer or supervise the administration of the plan (except as otherwise provided in section 103(d) of the Adoption Assistance and

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[90] P.L. 96-272, § 103(a), amended § 421 in its entirety, effective June 17, 1980. For § 421 as it formerly read, see Vol. II, p. 1829.

[91] P.L. 96-272, § 103(a), amended § 422 in its entirety effective June 17, 1980, except that in the case of Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, § 422(b)(1) shall be deemed to read as follows:

"(1) provide that (A) the State agency designated pursuant to section 402(a)(3) to administer or supervise the administration of the plan of the State approved under part A of this title will administer or supervise the administration of such plan for child welfare services, and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering such plan for child welfare services, the organizational unit in such State or local agency established pursuant to section 402(a)(15) will be responsible for furnishing such child welfare services;".

For § 422 as it formerly read, see Vol. II, p. 1830.

See P.L. 96-272, § 103(d), with respect to the applicability of § 422(b)(1) in certain cases, in Vol. II, p. 1509.

Child Welfare Act of 1980 [92]), and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering the plan, a single organizational unit in such State or local agency, as the case may be, will be responsible for furnishing such child welfare services;

(2) provide for coordination between the services provided for children under the plan and the services and assistance provided under title XX, under the State plan approved under part A of this title, under the State plan approved under part E of this title, and under other State programs having a relationship to the program under this part, with a view to provision of welfare and related services which will best promote the welfare of such children and their families;

(3) provide that the standards and requirements imposed with respect to child day care under title XX shall apply with respect to day care services under this part, except insofar as eligibility for such services is involved;

(4) provide for the training and effective use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan, and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(5) contain a description of the services to be provided and specify the geographic areas where such services will be available;

(6) contain a description of the steps which the State will take to provide child welfare services and to make progress in—

(A) covering additional political subdivisions,

(B) reaching additional children in need of services, and

(C) expanding and strengthening the range of existing services and developing new types of services,

along with a description of the State's child welfare services staff development and training plans;

(7) provide, in the development of services for children, for utilization of the facilities and experience of voluntary agencies in accordance with State and local programs and arrangements, as authorized by the State; and

(8) provide that the agency administering or supervising the administration of the plan will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require.

PAYMENT TO STATES [93]

SEC. 423. [42 U.S.C. 623] (a) From the sums appropriated therefor and the allotment under this part, subject to the conditions set forth in this section and in section 427, the Secretary shall from time to time pay to each State that has a plan developed in

[92] See P.L. 96-272, § 103(d), in Vol. II, p. 1509.

[93] P.L. 96-272, § 103(a), amended § 423 in its entirety, effective June 17, 1980. For § 423 as it formerly read, see Vol. II, p. 1831.

accordance with section 422 an amount equal to 75 per centum of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child welfare services.

(b) The method of computing and making payments under this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c)(1) No payment may be made to a State under this part, for any fiscal year beginning after September 30, 1979, with respect to State expenditures made for (A) child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, (B) foster care maintenance payments, and (C) adoption assistance payments, to the extent that the Federal payment with respect to those expenditures would exceed the total amount of the Federal payment under this part for fiscal year 1979.

(2) Expenditures made by a State for any fiscal year which begins after September 30, 1979, for foster care maintenance payments shall be treated for purposes of making Federal payments under this part with respect to expenditures for child welfare services, as if such foster care maintenance payments constituted child welfare services of a type to which the limitation imposed by paragraph (1) does not apply; except that the amount payable to the State with respect to expenditures made for other child welfare services and for foster care maintenance payments during any such year shall not exceed 100 per centum of the amount of the expenditures made for child welfare services for which payment may be made under the limitation imposed by paragraph (1) as in effect without regard to this paragraph.

(d) No payment may be made to a State under this part in excess of the payment made under this part for fiscal year 1979, for any fiscal year beginning after September 30, 1979, if for the latter fiscal year the total of the State's expenditures for child welfare services under this part (excluding expenditures for activities specified in subsection (c)(1)) is less than the total of the State's expenditures under this part (excluding expenditures for such activities) for fiscal year 1979.

REALLOTMENT [94]

SEC. 424. [42 U.S.C. 624] The amount of any allotment to a State under section 421 for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State

[94] P.L. 96-272, § 103(a), amended § 424 in its entirety, effective June 17, 1980. For § 424 as it formerly read, see Vol. II, p. 1832.

plan developed as provided in section 422 shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under section 421 and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 421.

DEFINITIONS [95]

SEC. 425. [42 U.S.C. 625] (a)(1) For purposes of this title, the term "child welfare services" means public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

(2) Funds expended by a State for any calendar quarter to comply with the statistical report required by section 476(b), and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this title, shall be deemed to have been expended for child welfare services.

(b) For other definitions relating to this part and to part E of this title, see section 475 of this Act.

RESEARCH, TRAINING, OR DEMONSTRATION PROJECTS

SEC. 426. [42 U.S.C. 626] (a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and

[95] P.L. 96-272, § 103(a), amended § 425 in its entirety, effective June 17, 1980. For § 425 as it formerly read, see Vol. II, p. 1832.

organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

FOSTER CARE PROTECTION REQUIRED FOR ADDITIONAL FEDERAL PAYMENTS [96]

SEC. 427. [42 U.S.C. 627] (a) If, for any fiscal year after fiscal year 1979, there is appropriated under section 420 a sum in excess of $141,000,000, a State shall not be eligible for payment from its allotment in an amount greater than the amount for which it would be eligible if such appropriation were equal to $141,000,000, unless such State—

(1) has conducted an inventory of all children who have been in foster care under the responsibility of the State for a period of six months preceding the inventory, and determined the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship; and

(2) has implemented and is operating to the satisfaction of the Secretary—

(A) a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding twelve months can readily be determined;

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[96] P.L. 96-272, § 103(b), added § 427, effective June 17, 1980.

(B) a case review system (as defined in section 475(5)) for each child receiving foster care under the supervision of the State; and

(C) a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

(b) If, for each of any two consecutive fiscal years after the fiscal year 1979, there is appropriated under section 420 a sum equal to $266,000,000, each State's allotment amount for any fiscal year after such two consecutive fiscal years shall be reduced to an amount equal to its allotment amount for the fiscal year 1979, unless such State—

(1) has completed an inventory of the type specified in subsection (a)(1);

(2) has implemented and is operating the program and systems specified in subsection (a)(2); and

(3) has implemented a preplacement preventive service program designed to help children remain with their families.

(c) Any amounts expended by a State for the purpose of complying with the requirements of subsection (a) or (b) shall be conclusively presumed to have been expended for child welfare services.

PAYMENTS TO INDIAN TRIBAL ORGANIZATIONS [97]

SEC. 428. [42 U.S.C. 628] (a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this part directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this part. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Amounts paid under subsection (a) shall be deemed to be a part of the allotment (as determined under section 421) for the State in which such Indian tribal organization is located.

(c) For purposes of this section—

(1) the term "tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body; and

(2) the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688) [98]) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

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[97] P.L. 96-272, § 103(b), added § 428, effective June 17, 1980.
[98] See P.L. 92-203 in Vol. II, p. 1455.

PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

PURPOSE

SEC. 430. [42 U.S.C. 630] The purpose of this part is to require the establishment of a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in public service employment, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.

APPROPRIATION

SEC. 431. [42 U.S.C. 631] (a) There is hereby authorized to be appropriated to the Secretary of Health, Education, and Welfare for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health, Education, and Welfare shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

(b) Of the amounts expended from funds appropriated pursuant to subsection (a) for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 33⅓ per centum thereof shall be expended for carrying out the program of on-the-job training referred to in section 432(b)(1)(B) and for carrying out the program of public service employment referred to in section 432(b)(3).

(c) Of the sums appropriated pursuant to subsection (a) to carry out the provisions of this part for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 50 percent shall be allotted among the States in accordance with a formula under which each State receives (from the total available for such allotment) an amount which bears the same ratio to such total as—

(1) in the case of the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974, the average number of recipients of aid to families with dependent children in such State during the month of January last preceding the commencement of such fiscal year bears to the average number of such recipients during such month in all the States; and

(2) in the case of the fiscal year ending June 30, 1975, or in the case of any fiscal year thereafter, the average number of individuals in such State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a)(19)(A) bears to the average

number of individuals in all States who, during such month, are so registered.[99]

ESTABLISHMENT OF PROGRAMS

SEC. 432. [42 U.S.C. 632] (a) The Secretary of Labor (hereinafter in this part referred to as the Secretary) shall, in accordance with the provisions of this part, establish work incentive programs (as provided for in subsection (b) of this section) in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established.

(b) Such programs shall include, but shall not be limited to, (1) (A) a program placing as many individuals as is possible in employment, and (B) a program utilizing on-the-job training positions for others, (2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and (3) a program of public service employment for individuals for whom a job in the regular economy cannot be found.

(c) In carrying out the the purposes of this part the Secretary may make grants to, or enter into agreements with, public or private agencies or organizations (including Indian tribes with respect to Indians on a reservation), except that no such grant or agreement shall be made to or with a private employer for profit or with a private nonprofit employer not organized for a public purpose for purposes of the work experience program established by clause (2) of subsection (b).

(d) In providing the manpower training and employment services and opportunities required by this part, the Secretary of Labor shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available to him under this or any other Act. In order to assure that the services and opportunities so required are provided, the Secretary of Labor shall use the funds appropriated to him under this part to provide programs required by this part through such other Act, to the same extent and under the same conditions (except as regards the Federal matching percentage) as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary of Labor may reimburse such agencies for services rendered to persons under this part to the extent such services and opportunities are not otherwise available on a nonreimbursable basis.

(e) The Secretary shall take appropriate steps to assure that the present level of manpower services available under the authority of other statutes to recipients of aid to families with dependent children is not reduced as a result of programs under this part.

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[99] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year.

(f)(1) The Secretary of Labor shall establish in each State, municipality, or other appropriate geographic area with a significant number of persons registered pursuant to section 402(a)(19)(A) a Labor Market Advisory Council the function of which will be to identify and advise the Secretary of the types of jobs available or likely to become available in the area served by the Council; except that if there is already located in any area an appropriate body to perform such function, the Secretary may designate such body as the Labor Market Advisory Council for such area.

(2) Any such Council shall include representatives of industry, labor, and public service employers from the area to be served by the Council.

(3) The Secretary shall not conduct, in any area, institutional training under any program established pursuant to subsection (b) of any type which is not related to jobs of the type which are or are likely to become available in such area as determined by the Secretary after taking into account information provided by the Labor Market Advisory Council for such area.

OPERATION OF PROGRAM

SEC. 433. [42 U.S.C. 633] (a) The Secretary shall provide a program of testing and counseling for all persons certified to him by a State, pursuant to section 402(a)(19)(G), and shall select those persons whom he finds suitable for the programs established by clauses (1) and (2) of section 432(b). Those not so selected shall be deemed suitable for the program established by clause (3) of such section 432(b) unless the Secretary finds that there is good cause for an individual not to participate in such program. The Secretary, in carrying out such program for individuals certified to him under section 402(a)(19)(G), shall accord priority to such individuals in the following order, taking into account employability potential: first, unemployed fathers; second, mothers, whether or not required to register pursuant to section 402(a)(19)(A), who volunteer for participation under a work incentive program; third, other mothers, and pregnant women, registered pursuant to section 402(a)(19)(A), who are under 19 years of age; fourth, dependent children and relatives who have attained age 16 and who are not in school or engaged in work or manpower training; and fifth, all other individuals so certified to him.

(b)(1) For each State the Secretary shall develop jointly with the administrative unit of such State administering the special program referred to in section 402(a)(19)(G) a statewide operational plan.

(2) The statewide operational plan shall prescribe how the work incentive program established by this part will be operated at the local level, and shall indicate (i) for each area within the State the number and type of positions which will be provided for training, for on-the-job training, and for public service employment, (ii) the manner in which information provided by the Labor Market Advisory Council (established pursuant to section 432(f)) for any such area will be utilized in the operation of such program, and (iii) the particular State agency or administrative unit thereof which will be responsible for each of the various activities and functions to be performed under such program. Any such operational plan for any

State must be approved by the Secretary, the administrative unit of such State administering the special program referred to in section 402(a)(19)(G), and the regional joint committee (established pursuant to section 439) for the area in which such State is located.

(3) The Secretary shall develop an employability plan for each suitable person certified to him pursuant to section 402(a)(19)(G) which shall describe the education, training, work experience, and orientation which it is determined that such person needs to complete in order to enable him to become self-supporting.

(c) The Secretary shall make maximum use of services available from other Federal and State agencies and, to the extent not otherwise available on a nonreimbursable basis, he may reimburse such agencies for services rendered to persons under this part.

(d) To the extent practicable and where necessary, work incentive programs established by this part shall include, in addition to the regular counseling, testing, and referral available through the Federal-State Employment Service System, program orientation, basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development, and special job placement and followup services, required to assist participants in securing and retaining employment and securing possibilities for advancement.

(e)(1) In order to develop public service employment under the program established by section 432(b)(3), the Secretary shall enter into agreements with (A) public agencies, (B) private nonprofit organizations established to serve a public purpose, and (C) Indian tribes with respect to Indians on a reservation, under which individuals deemed suitable for participation in such a program will be provided work which serves a useful public purpose and which would not otherwise be performed by regular employees.

(2) Such agreements shall provide—

(A) for the payment by the Secretary to each employer, with respect to public service employment performed by any individual for such employer, of an amount not exceeding 100 percent of the cost of providing such employment to such individual during the first year of such employment, an amount not exceeding 75 percent of the cost of providing such employment to such individual during the second year of such employment, and an amount not exceeding 50 percent of the cost of providing such employment to such individual during the third year of such employment;

(B) the hourly wage rate and the number of hours per week individuals will be scheduled to work in public service employment for such employer;

(C) that the Secretary will have such access to the premises of the employer as he finds necessary to determine whether such employer is carrying out his obligations under the agreement and this part; and

(D) that the Secretary may terminate any agreement under this subsection at any time.

[(3) Repealed.[100]]

[100] P.L. 92-223, § 3(b)(4)(C), effective July 1, 1972.

(4) No wage rates provided under any agreement entered into under this subsection shall be lower than the applicable minimum wage for the particular work concerned.

(f) Before entering into a project under section 432(b)(3), the Secretary shall have reasonable assurances that—

(1) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(2) such project will not result in the displacement of employed workers,

(3) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant,

(4) appropriate workmen's compensation protection is provided to all participants.

(g) Where an individual, certified to the Secretary of Labor pursuant to section 402(a)(19)(G) refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary of Labor shall (after providing opportunity for fair hearing) notify the State agency which certified such individual and submit such other information as he may have with respect to such refusal.

(h) With respect to individuals who are participants in public service employment under the program established by section 432(b)(3), the Secretary shall periodically (but at least once every six months) review the employment record of each such individual while on such special work project and on the basis of such record and such other information as he may acquire determine whether it would be feasible to place such individual in regular employment or on any of the projects under the programs established by section 432(b)(1) and (2).

INCENTIVE PAYMENT

SEC. 434. [42 U.S.C. 634] (a) The Secretary is authorized to pay to any participant under a program established by section 432(b)(2) an incentive payment of not more than $30 per month, payable in such amounts and at such times as the Secretary prescribes.

(b) The Secretary of Labor is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training.

FEDERAL ASSISTANCE

SEC. 435. [42 U.S.C. 635] (a) Federal assistance under this part shall not exceed 90 per centum of the costs of carrying out this part. Non-Federal contributions may be cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(b) Costs of carrying out this part include costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the Secretary, but may

not include any reimbursement for time spent by participants in work, training, or other participation in the program.[101]

PERIOD OF ENROLLMENT

SEC. 436. [42 U.S.C. 636] (a) The program established by section 432(b)(2) shall be designed by the Secretary so that the average period of enrollment under all projects under such program throughout any area of the United States will not exceed one year.

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed jointly by him and the Secretary of Health, Education, and Welfare) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 402.

RELOCATION OF PARTICIPANTS

SEC. 437. [42 U.S.C. 637] The Secretary may assist participants to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employable and self-supporting. Such assistance shall be given only to participants who concur in their relocation and who will be employed at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for participants, their dependents, and their household belongings plus such relocation allowance as the Secretary determines to be reasonable.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 438. [42 U.S.C. 638] Participants in programs established by this part shall be deemed not to be Federal employees and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

RULES AND REGULATIONS

SEC. 439. [42 U.S.C. 639] The Secretary and the Secretary of Health, Education, and Welfare, shall, not later than July 1, 1972, issue regulations to carry out the purposes of this part. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of Health, Education, and Welfare, of (1) a national coordination committee the duty of which shall be to establish uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of statewide operational plans developed pursuant to section 433(b).

ANNUAL REPORT

SEC. 440. [42 U.S.C. 640] The Secretary shall annually report to the Congress (with the first such report being made on or before

[101] See P.L. 95-30, § 401, regarding the work incentive program, in Vol. II, p. 1674.

July 1, 1970) on the work incentive programs established by this part.

EVALUATION AND RESEARCH

SEC. 441. [42 U.S.C. 641] (a) [101A] The Secretary shall (jointly with the Secretary of Health, Education, and Welfare) provide for the continuing evaluation of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 435 and 443, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part. Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part.

TECHNICAL ASSISTANCE FOR PROVIDERS OF EMPLOYMENT OR TRAINING

SEC. 442. [42 U.S.C. 642] The Secretary is authorized to provide technical assistance to providers of employment or training to enable them to participate in the establishment and operation of programs authorized to be established by section 432(b).

COLLECTION OF STATE SHARE

SEC. 443. [42 U.S.C. 643] If a non-Federal contribution of 10 per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 402(a)), the Secretary of Health, Education, and Welfare may withhold any action under section 404 because of the State's failure to comply substantially with a provision required by section 402. If the Secretary of Health, Education, and Welfare does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 3(a), 403(a), 1003(a), 1403(a), 1603(a), and 1903(a) until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 402(a)(19)(C)) equals 10 per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such 10 per centum will be contributed as required by section 402. Amounts so withheld shall be deemed to have been paid to the State under such sections and shall be paid by the Secretary of Health, Education, and Welfare to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 435.

[101A] As in original. Should delete "(a)", as there is no subsection (b).

AGREEMENTS WITH OTHER AGENCIES PROVIDING ASSISTANCE TO FAMILIES OF UNEMPLOYED PARENTS

SEC. 444. [42 U.S.C. 644] (a) The Secretary is authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (b)) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals certified by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals certified to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of Health, Education, and Welfare under part A of this title.

(b) A qualified State agency referred to in subsection (a) is a State agency which is charged with the administration of a program—

(1) the purpose of which is to provide aid or assistance to the families of unemployed parents,

(2) which is not established pursuant to part A of title IV of the Social Security Act,

(3) which is financed entirely from funds appropriated by the Congress, and

(4) none of the financing of which is made available under any program established pursuant to title V of the Economic Opportunity Act [102].

(c)(1) Any agreement under this section with a qualified State agency shall provide that such agency will, with respect to all individuals receiving aid or assistance under the program of aid or assistance to families of unemployed parents administered by such agency, comply with the requirements imposed by section 402(a)(19) in the same manner and to the same extent as if (A) such qualified agency were the agency in such State administering or supervising the administration of a State plan approved under part A of this title, and (B) individuals receiving aid or assistance under the program administered by such qualified agency were recipients of aid under a State plan which is so approved.

(2) Any agreement entered into under this section shall remain in effect for such period as may be specified in the agreement by the Secretary and the qualified State agency, except that, whenever the Secretary determines, after reasonable notice and opportunity for hearing to the qualified State agency, that such agency has failed substantially to comply with its obligations under such agreement, the Secretary may suspend operation of the agreement until such time as he is satisfied that the State agency will no longer fail substantially to comply with its obligations under such agreement.

(3) Any such agreement shall further provide that the agreement will be inoperative for any calendar quarter if, for the preceding calendar quarter, the maximum amount of benefits payable under the program of aid or assistance to families of unemployed parents administered by the qualified State agency which is a party to such

[102] See Economic Opportunity Act (P.L. 88-452), §§ 501-503, in Vol. II, p. 1401.

agreement is lower than the maximum amount of benefits payable under such program for the quarter which ended September 30, 1967.

(d) The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section and upon receipt from it of a list of the names of individuals rereferred [102A] to the Secretary, furnish to such agency the names of each individual on such list participating in public service employment under section 433(a)(3) whom the Secretary determines should continue to participate in such employment. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been certified to the Secretary by such agency under section 402(a)(19)(G) for a period of at least six months.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY [103]

APPROPRIATION

SEC. 451. [42 U.S.C. 651] For the purpose of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity, and obtaining child support, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

DUTIES OF THE SECRETARY

SEC. 452. [42 U.S.C. 652] (a) The Secretary shall establish, within the Department of Health, Education, and Welfare a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than annually,

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[102A] As in law.

[103] P.L. 93-647, § 101(a), added Part D, effective July 1, 1975, for all sections except § 459; § 459 is effective January 1, 1975.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

See 29 U.S.C. § 49b for the requirement that State employment offices supply data in aid of administration of the Aid to Families With Dependent Children and child support programs, in Vol. II, p. 1181.

See Internal Revenue Code of 1954, § 6103(l) relating to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration, § 7213(a)(1) relating to the penalty for unauthorized disclosure of that tax return information, and § 7217 regarding civil damages for unauthorized disclosure of that tax information, in Vol. II, p. 1341.

See P.L. 95-630, §§ 1101-1121, with respect to an individual's right to financial privacy, in Vol. II, p. 1712.

See P.L. 96-611, §§ 7, 8(c), 10, and 11(b)(2), with respect to cases involving parental kidnaping, in Vol. II, p. 1747.

conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 403(h) whether the actual operation of such programs in each State conforms to the requirements of this part;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child support and establishing paternity;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Parent Locator Service established by section 453; and

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the number of child support cases in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the absent parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of aid under a State plan approved under part A has refused to cooperate in identifying and locating the absent parent and the number of cases in which refusal so to cooperate is based on good cause (as determined in accordance with the standards referred to in section 402(a)(26)(B)(ii));

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government; and

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report.[104]

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 454(6), (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A.[105]

(b) The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify the amount of any child support obligation assigned to such State (or undertaken to be collected by such State pursuant to section 454(6)) [106] to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954. No amount may be certified for collection under this subsection except the amount of the delinquency under a court order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the United States for any costs involved in making the collection. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c)(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in

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[104] P.L. 95–30, § 504(a), amended paragraph (10) in its entirety, effective in the case of reports submitted by the Secretary after 1976. For paragraph (10) as it formerly read, see Vol. II, p. 1789.
See P.L. 95–30, § 504(c), with respect to a supplementary report by the Secretary to Congress, in Vol. II, p. 1675.

[105] P.L. 96–272, § 301(b), added the preceding sentence to § 452(a)(10), effective June 17, 1980.

[106] P.L. 96–265, § 402(a), added "(or undertaken to be collected by such State pursuant to section 454(6))", effective July 1, 1980.

accordance with the provisions of section 457 such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1954.

(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 of the Internal Revenue Code of 1954, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding section shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(d)(1) The Secretary shall not approve the initial and annually updated advance automatic data processing planning document, referred to in section 454(16), unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed management system referred to in section 455(a)(3), including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a), on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 455(a)(3), with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 454(16).

(B) If the Secretary finds with respect to any statewide management information system referred to in section 455(a)(3) that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure

of such system to comply with such criteria, requirements, and other undertakings so prescribed.[107]

(e) The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 455(a)(3).[108]

PARENT LOCATOR SERVICE

SEC. 453. [42 U.S.C. 653] (a) The Secretary shall establish and conduct a Parent Locator Service, under the direction of the designee of the Secretary referred to in section 452(a), which shall be used to obtain and transmit to any authorized person (as defined in subsection (c)) information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.

(b) Upon request, filed in accordance with subsection (d) of any authorized person (as defined in subsection (c)) for the most recent address and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of Health, Education, and Welfare; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e), from any other department, agency, or instrumentality, or [109] the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1).

(c) As used in subsection (a), the term "authorized person" means—

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child support (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this title) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against

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[107] P.L. 96-265, § 405(c), added subsection (d), effective July 1, 1981, only with respect to expenditures, referred to in § 455(a)(3) of the Act (as amended by P.L. 96-265), made on or after that date.

[108] P.L. 96-265, § 405(d), added subsection (e), effective as indicated in footnote 107 of this title.

[109] As in original. Should be "of".

an absent parent who has a duty to support and maintain any such child.

(d) A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

(e)(1) Whenever the Secretary receives a request submitted under subsection (b) which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c), he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him. Whenever such services are furnished to an individual specified in subsection (c)(3), a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(f) The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) and, after determining that the absent parent cannot be located through the procedures under the control of such State agencies, to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

STATE PLAN FOR CHILD SUPPORT

SEC. 454. [42 U.S.C. 654] A State plan for child support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing

and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that such State will undertake—

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 402(a)(26) of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so,[110] and

(B) in the case of any child with respect to whom such assignment is effective, to secure support for such child from his parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so)[111], except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support; [112]

(5) provide that, in any case in which child support payments are collected for a child with respect to whom an assignment under section 402(a)(26) is effective, such payments shall be made to the State for distribution pursuant to section 457 and shall not be paid directly to the family except that this paragraph shall not apply to such payments (except as provided in section 457(c)) for any month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A; [112]

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, (B) an application fee for furnishing such services may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary, and (C) any costs in excess of the fee so imposed may be collected from such individual by deducting such costs from the amount of any recovery made;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency administering the plan, including the entering into

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[110] P.L. 94-88, § 208(b), added "unless the agency administering the plan of the State under part A of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so,", effective August 1, 1975.

See P.L. 94-88, § 208(d), regarding protection of a child's best interests, in Vol. II, p. 1651.

[111] P.L. 94-88, § 208(c), added "(unless the agency administering the plan of the State under part A of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so)", effective August 1, 1975.

[112] See P.L. 94-88, § 201, regarding temporary waiver of certain requirements, and § 203, regarding support assignments, in Vol. II, p. 1650.

of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health, Education, and Welfare; [113]

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary,

(B) in locating an absent parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

(D) in carrying out other functions required under a plan approved under this part;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11) provide that amounts collected as child support shall be distributed as provided in section 457;

(12) provide that any payment required to be made under section 456 or 457 to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments;

(14) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe; [114]

(15) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary); [115]

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[113] See Internal Revenue Code of 1954, § 6103(l), relating to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration; § 7213(a)(1), relating to the penalty for unauthorized disclosure of that tax return information; and § 7217, regarding civil damages for unauthorized disclosure of that tax information, in Vol. II, p. 1341.

[114] P.L. 95-30, § 502, added paragraph (14), effective June 1, 1977.

[115] P.L. 95-30, § 502, added paragraph (15), effective June 1, 1977.

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under section 452(d) of an automatic data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the child support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom child support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay child support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection and distribution, of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, and (D) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement [116]; and

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 463 for the use of the Parent Locator Service established under section 453, to accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, and to impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, to transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect, otherwise to comply with such

[116] P.L. 96-265, § 405(b)(3), added paragraph (16), effective July 1, 1981, only with respect to expenditures, referred to in § 455(a)(3) of the Act (as amended by P.L. 96-265), made on or after that date.

agreement and regulations of the Secretary with respect thereto.[117]

PAYMENTS TO STATES [118]

SEC. 455. [42 U.S.C. 655] (a) [119] From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, beginning with the quarter commencing July 1, 1975, an amount—

(1) equal to 75 percent of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454,

(2) equal to 50 percent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 454 except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law, and [120]

(3) equal to 90 percent (rather than the percent specified in clause (1) or (2)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system which the Secretary finds meets the requirements specified in section 454(16).[121]

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 463.[122]

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

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[117] P.L. 96-611, § 9(a)(3), added paragraph (17), effective December 28, 1980.

[118] P.L. 94-88, § 201(c), amended § 455 in its entirety, effective August 1, 1975. For § 455 as it formerly read, see Vol. II, p. 1774.

[119] P.L. 94-88, § 205(a), added "(a)", effective August 1, 1975.

[120] P.L. 96-178, § 2(a), deleted from § 455(a) "except that no amount shall be paid to any State on account of furnishing child support collection or paternity determination services (other than the parent locator services) to individuals under section 454(6) during any period beginning after September 30, 1978.", effective January 2, 1980, with respect to services furnished during the period beginning October 1, 1978, and ending March 31, 1980. In the matter so deleted P.L. 94-365, § 3, effective July 14, 1976, deleted "June 30, 1976" and substituted "June 30, 1977"; and P.L. 95-59, § 4, effective June 30, 1977, deleted "June 30, 1977" and substituted "September 30, 1978".

P.L. 96-272, § 301(a), effective June 17, 1980, deleted "during the period beginning October 1, 1978, and ending March 31, 1980" and substituted "on or after October 1, 1978".

See 29 U.S.C. § 49b (Wagner-Peyser Act) for the requirement that State employment offices supply data in aid of administration of the Aid to Families With Dependent Children and child support programs, in Vol. II, p. 1181.

[121] P.L. 96-265, § 405(a)(3), added paragraph (3), effective July 1, 1981, only with respect to expenditures, referred to in § 455(a)(3) of the Act (as amended by P.L. 96-265), made on or after that date.

P.L. 96-611, § 11(c), deleted ";" and substituted ".", effective December 28, 1980. As in original.

[122] P.L. 96-611, § 9(c), added "except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 463.", effective December 28, 1980.

(2) Subject to subsection (d), the Secretary [123] shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.[124]

(c)(1) Subject to paragraph (2), there shall be included, in determining amounts expended by a State during any quarter for the operation of the plan approved under section 454, so much of the expenditures of courts of such State and its political subdivisions (excluding expenditures for or in connection with judges and other individuals making judicial determinations, but not excluding expenditures for or in connection with their administrative and support personnel) as are attributable to the performance of services which are directly related to, and clearly identifiable with, the operation of such plan.

(2) The aggregate amount of the expenditures which are included pursuant to paragraph (1) for the quarters in any calendar year shall be reduced (but not below zero) by the total amount of expenditures described in paragraph (1) which were made by the State for the 12-month period beginning January 1, 1978.

(3) The State agency may, if the law (or procedures established thereunder) of the State so provides, pay so much of the amount it receives under subsection (a) for any quarter as is payable by reason of the provisions of this subsection directly to the courts of the State (or political subdivisions thereof) furnishing the services on account of which the payment is payable.[125]

(d) Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a), there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a).[126]

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[123] P.L. 96-265, § 407(a), deleted "The Secretary" and inserted "Subject to subsection (d), the Secretary", effective in the case of calendar quarters commencing on or after January 1, 1981.

[124] P.L. 94-88, § 205, added subsection (b), effective August 1, 1975.

See P.L. 94-88, § 206, with respect to payments to States for certain expenses incurred during July 1975, in Vol. II, p. 1651.

[125] P.L. 96-265, § 404(a), added subsection (c), effective with respect to expenditures made by States on or after July 1, 1980.

[126] P.L. 96-265, § 407(b), added subsection (d), effective in the case of calendar quarters commencing on or after January 1, 1981.

SUPPORT OBLIGATIONS [126A]

SEC. 456. [42 U.S.C. 656] (a) [126B] The support rights assigned to the State under section 402(a)(26) shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(1) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(2) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under paragraphs (1)(A) and (B).

[(b) Repealed.[127]]

DISTRIBUTION OF PROCEEDS

SEC. 457. [42 U.S.C. 657] (a) The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing); [128]

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

[126A] See 11 U.S.C. 523(a)(5) with respect to the applicability of the bankruptcy laws to support obligations, in Vol. II, p. 1159.

[126B] Subsection (a) designation may not be appropriate in view of repeal of subsection (b).

[127] P.L. 95-598, § 328, repealed subsection (b), effective November 6, 1978. For subsection (b) as it formerly read, see Vol. II, p. 1809.

[128] See P.L. 95-30, § 505, regarding expenditures by the State of Georgia, in Vol. II, p. 1675.

(b) The amounts collected as child support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall be distributed as follows:

(1) such amounts as are collected periodically which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing); [128]

(2) such amounts as are in excess of amounts retained by the State under paragraph (1) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(3) such amounts as are in excess of amounts required to be distributed under paragraphs (1) and (2) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Whenever a family for whom child support payments have been collected and distributed under the plan ceases to receive assistance under part A of this title, the State may—

(1) continue to collect amounts of child support payments which represent monthly [129] support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under part A of this title, and pay all amounts so collected, which represent monthly support payments,[130] to the family; and

(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of child support payments which represent monthly [131] support payments from the absent parent and pay the net amount of any amount so collected, which represents monthly support payments,[130] to the family after deducting any costs incurred in making the collection from the amount of any recovery made,

and so much of any amounts of child support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(3)(A) and (B) with respect to excess amounts described in subsection (b).[132]

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[128] P.L. 95-171, § 11(a)(1), deleted "such", and substituted "amounts of child support payments which represent monthly", effective November 12, 1977.

[130] P.L. 95-171, § 11(a)(2), added ", which represent monthly support payments," and § 11(b)(2) added ", which represents monthly support payments,", effective November 12, 1977.

[131] P.L. 95-171, § 11(b)(1), deleted "such" and substituted "amounts of child support payments which represent monthly", effective November 12, 1977.

[132] P.L. 95-171, § 11(c), added to § 457(c) "and so much of any amounts of child support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(3)(A) and (B) with respect to excess amounts described in subsection (b).", effective November 12, 1977.

INCENTIVE PAYMENT TO STATES AND [133] LOCALITIES [134]

SEC. 458. [42 U.S.C. 658] (a) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, or a State on its own behalf makes,[135] the enforcement and collection of the support rights assigned under section 402(a)(26) (either within or outside of such State), there shall be paid to such political subdivision, such other State, or such State (in the case of a State which on its own behalf makes such enforcement and collection) [136] from amounts which would otherwise represent the Federal share of assistance to the family of the absent parent an amount equal to 15 per centum of any amount collected and required to be distributed as provided in section 457 to reduce or repay assistance payments.[137]

(b) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under [138] subsection (a) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(c) No payment under the preceding provisions of this section shall be made to any State or political subdivision thereof with respect to any amount collected and distributed by it unless such amount was collected and distributed in accordance with the State plan of the State approved by the Secretary as meeting the conditions required by section 454.[139]

CONSENT BY THE UNITED STATES TO GARNISHMENT AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS [139A]

SEC. 459. [42 U.S.C. 659] (a) Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) [140] to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States

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[133] P.L. 96-272, § 307(a), added "STATES AND", effective June 17, 1980.

[134] See P.L. 94-88, § 201(b), with respect to temporary waivers of certain requirements for certain States, and § 203(b) with respect to support assignments by recipients during transitional period, in Vol. II, p. 1650.

[135] P.L. 96-272, § 307(b)(1), added "or a State on its own behalf makes,", effective June 17, 1980.

[136] P.L. 96-272, § 307(b)(2), deleted "or such other State" and substituted ", such other State, or such State (in the case of a State which on its own behalf makes such enforcement and collection)", effective June 17, 1980.

[137] P.L. 95-30, § 503(a)(1), deleted "parent—(1) an amount equal to 25 per centum of any amount collected (and required to be distributed as provided in section 457 to reduce or repay assistance payments) which is attributable to the support obligation owed for 12 months; and (2) an amount equal to 10 per centum of any amount collected (and required to be distributed as provided in section 457 to reduce or repay assistance payments) which is attributable to the support obligation owed for any month after the first twelve months for which such collections are made.", and substituted "parent an amount equal to 15 per centum of any amount collected and required to be distributed as provided in section 457 to reduce or repay assistance payments.", effective with respect to amounts collected on and after October 1, 1977.

[138] P.L. 95-30, § 503(a)(2), deleted "paragraphs (1) and (2) of", effective with respect to amounts collected on and after October 1, 1977.

[139] P.L. 96-272, § 307(c), added subsection (c), effective June 17, 1980.

[139A] See 11 U.S.C. 523(a)(5) with respect to the applicability of the bankruptcy laws to support obligations, in Vol. II, p. 1159.

[140] P.L. 95-30, § 501(a)(1), deleted "(including any agency or instrumentality thereof and any wholly owned Federal Corporation)" and substituted "or the District of Columbia (including any agency, subdivision, or instrumentality thereof)", effective June 1, 1977.

or the District of Columbia [141] were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

(b) Service of legal process brought for the enforcement of an individual's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations promulgated pursuant to section 461 (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of such governmental entity). Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the moneys involved.[142]

(c) No Federal employee whose duties include responding to interrogatories pursuant to requirements imposed by section 461(b)(3) shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by him in connection with the carrying out of any of his duties which pertain (directly or indirectly) to the answering of any such interrogatory.[142]

(d) Whenever any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy thereof) to the individual whose moneys are affected thereby at his duty station or last-known home address.[142]

(e) Governmental entities affected by legal processes served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.[142]

(f) Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.[142]

CIVIL ACTIONS TO ENFORCE CHILD SUPPORT OBLIGATIONS

SEC. 460. [42 U.S.C. 660] The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health, Education, and Welfare under section 452(a)(8) of

[141] P.L. 95-30, § 501(a)(2), inserted "or the District of Columbia", effective June 1, 1977.
[142] P. L. 95-30, § 501, added this subsection, effective June 1, 1977.

this Act. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

REGULATIONS PERTAINING TO GARNISHMENTS [143]

SEC. 461. [42 U.S.C. 661] (a) Authority to promulgate regulations for the implementation of the provisions of section 459 shall, insofar as the provisions of such section are applicable to moneys due from (or payable by)—

(1) the executive branch of the Government (including in such branch, for the purposes of this subsection, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or his designee),

(2) the legislative branch of the Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Government, be vested in the Chief Justice of the United States (or his designee).

(b) Regulations promulgated pursuant to this section shall—

(1) in the case of those promulgated by the executive branch of the Government, include a requirement that the head of each agency thereof shall cause to be published, in the appendix of the regulations so promulgated, (A) his designation of an agent or agents to accept service of process, identified by title of position, mailing address, and telephone number, and (B) an indication of the data reasonably required in order for the agency promptly to identify the individual with respect to whose moneys the legal process is brought,

(2) in the case of regulations promulgated for the legislative and judicial branches of the Government set forth, in the appendix to the regulations so promulgated, (A) the name, position, address, and telephone number of the agent or agents who have been designated for service of process, and (B) an indication of the data reasonably required in order for such entity promptly to identify the individual with respect to whose moneys the legal process is brought, and

(3) provide that (A) in the case of regulations promulgated by the executive branch of the Government, each head of a governmental entity (or his designee) shall respond to relevant interrogatories, if authorized by the law of the State in which legal process will issue, prior to formal issuance of such process, upon a showing of the applicant's entitlement to child support or alimony payments, and (B) in the case of regulations promulgated for the legislative and judicial branches of the Government, the person or persons designated as agents for service of process in accordance with paragraph (2) shall respond to relevant interrogatories if authorized by the law of the State in which legal process will issue, prior to formal

[143] P.L. 95-30, § 501(c), added § 461, effective June 1, 1977.

issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

(c) In the event that a governmental entity, which is authorized under this section or regulations issued to carry out this section to accept service of process, pursuant to the provisions of subsection (a), is served with more than one legal process with respect to the same moneys due or payable to any individual, then such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

DEFINITIONS [144]

SEC. 462. [42 U.S.C. 662] For purposes of section 459—

(a) The term "United States" means the Federal Government of the United States, consisting of the legislative branch, the judicial branch, and the executive branch thereof, and each and every department, agency, or instrumentality of any such branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature thereof, and the governments of the territories and possessions of the United States.

(b) The term "child support", when used in reference to the legal obligations of an individual to provide such support, means periodic payments of funds for the support and maintenance of a child or children with respect to which such individual has such an obligation, and (subject to and in accordance with State law) includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; such term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(c) The term "alimony", when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of such individual, and (subject to and in accordance with State law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; such term also includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

[144] P.L. 95-30, § 501(d), added § 462, effective June 1, 1977.

(d) The term "private person" means a person who does not have sovereign or other special immunity or privilege which causes such person not to be subject to legal process.

(e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which—

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

(1) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

(2) periodic benefits (including a periodic benefit as defined in section 228(h)(3) of this Act) or other payments to such individual under the insurance system established by title II of this Act or any other system or fund established by the United States (as defined in subsection (a)) which provides for the payment of pensions, retirement or retired pay, annuities, dependents [144A] or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Veterans' Administration as pension, or any payments by the Veterans' Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans' Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

[144A] As in original. Should be "dependents' ".

(1) are owed by such individual to the United States,

(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to, Federal employment taxes, and fines and forfeitures ordered by court-martial,

(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1954 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

(4) are deducted as health insurance premiums,

(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

USE OF FEDERAL PARENT LOCATOR SERVICE IN CONNECTION WITH THE ENFORCEMENT OR DETERMINATION OF CHILD CUSTODY AND IN CASES OF PARENTAL KIDNAPING OF A CHILD [145]

SEC. 463. [42 U.S.C. 663] (a) The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the services of the Parent Locator Service established under section 453 shall be made available to such State for the purpose of determining the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(b) An agreement entered into under this section shall provide that the State agency described in section 454 will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(c) Information authorized to be provided by the Secretary under this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 453, and a request for information by the Secretary under this section shall be considered to be a request for information under section 453 which is authorized to be provided under such section.

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[145] P. L. 96-611, § 9(b), added § 463, effective December 28, 1980.

See P. L. 96-611, § 9(d), with respect to a limitation on the effective date of § 463 agreements, in Vol. II, p. 1748.

Only information as to the most recent address and place of employment of any absent parent or child shall be provided under this section.

(d) For purposes of this section—

(1) the term "custody determination" means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term "authorized person" means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody determination;

(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE [146]

PURPOSE: APPROPRIATION [147]

SEC. 470. [42 U.S.C. 670] For the purpose of enabling each State to provide, in appropriate cases, foster care and adoption assistance for children who otherwise would be eligible for assistance under the State's plan approved under part A (or, in the case of adoption assistance, would be eligible for benefits under title XVI), there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE [148]

SEC. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 472 and for adoption assistance payments in accordance with section 473;

(2) provides that the State agency responsible for administering the program authorized by part B of this title shall admin-

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[146] P.L. 96-272, § 101(a)(1), added part E, effective June 17, 1980. See P.L. 96-272, § 101(a)(2), with respect to the applicability of § 408 (repealed) to a State plan approved under part E, in Vol. II, p. 1507.

See P.L. 96-272, § 101(b), with respect to the Secretary's report to Congress on foster care and adoption, in Vol. II, p. 1508.

[147] P.L. 96-272, § 101(a)(1), added § 470, effective June 17, 1980.

[148] P. L. 96-272, § 101(a)(1), added § 471, effective June 17, 1980.

ister, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, C, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that where any agency of the State has reason to believe that the home or institution in which a child resides

whose care is being paid for in whole or in part with funds provided under this part or part B of this title is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;

(10) provides that the standards referred to in section 2003(d)(1)(F) shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance payments to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home; and

(16) provides for the development of a case plan (as defined in section 475(1)) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) with respect to each such child.[149]

(b) The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section. However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a), or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to

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[149] See P.L. 96-272, § 102(d), with respect to voluntary removal of a child from a relative's home before October 1, 1979, in Vol. II, p. 1508.

See P.L. 96-272, § 102(e), with respect to the Secretary's report to Congress on the number of children placed in foster care pursuant to certain voluntary placement agreements, in Vol. II, p. 1509.

the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.

FOSTER CARE MAINTENANCE PAYMENTS PROGRAM [149] [150]

SEC. 472. [42 U.S.C. 672] (a) Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 475(4)) under this part with respect to a child who would meet the requirements of section 406(a) or of section 407 but for his removal from the home of a relative (specified in section 406(a)), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or [151] was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) have been made;

(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 471, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination [152] referred to in paragraph (1); and

(4) such child—

(A) received aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or [153] court proceedings leading to the removal of such child from the home were initiated, or

(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 406(a) within six months prior to the month in which such agreement was

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[150] P.L. 96–272, § 101(a)(1), added § 472, effective June 17, 1980.

[151] P.L. 96–272, § 102(a)(1)(A), added "occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or", effective with respect to expenditures made after September 30, 1980, and before October 1, 1983.

P.L. 96–272, § 102(c), provides that that amendment is effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983, and that from and after October 1, 1983, § 472(a) shall read as it would if P.L. 96–272, § 102, had not been enacted.

For legislative history comment, see House Conference Report 96–900, pp. 50 and 51, on P.L. 96–272.

[152] P.L. 96–272, § 102(a)(1)(B), deleted "a determination" and inserted "the voluntary placement agreement or judicial determination", effective as indicated in footnote 151 of this title.

[153] P.L. 96–272, § 102(a)(1)(C), added "such agreement was entered into or", effective with respect to expenditures made after September 30, 1980, and before October 1, 1983.

P.L. 96–272, § 102(c), provides that that amendment is effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983, and that from and after October 1, 1983, § 472(a) shall read as it would if P.L. 96–272, § 102, had not been enacted.

For legislative history comment, see House Conference Report 96–900, pp. 50 and 51, on P.L. 96–272.

entered into or [154] such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

(b) Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 475(4)).

(c) For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term "child-care institution" means a nonprofit private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Notwithstanding any other provision of this title, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 427(b).[155]

(e) No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.[155]

(f) For the purposes of this part and part B of this title, (1) the term "voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents

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[154] P.L. 96-272, § 102(a)(1)(D), added "such agreement was entered into or", effective as indicated in footnote 153 of this title.

[155] P.L. 96-272, § 102(a)(2), added subsections (d), (e), (f), and (g), effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983; and from and after October 1, 1983, § 472 shall read as it would if these subsections had not been enacted.

or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term "voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.[155]

(g) In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a), and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.[155]

(h) For purposes of titles XIX and XX, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title.[156]

ADOPTION ASSISTANCE PROGRAM [157]

SEC. 473. [42 U.S.C. 673] (a)(1) Each State with a plan approved under this part shall, directly through the State agency or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (2) of this subsection to parents who, after the effective date of this section[157], adopt a child who—

(A)(i) at the time adoption proceedings were initiated, met the requirements of section 406(a) or section 407 or would have met such requirements except for his removal from the home of a relative (specified in section 406(a)), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or 403) or [158] as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, or

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[155] P.L. 96-272, § 101(a)(1), added this subsection as "(d)", effective June 17, 1980.

P.L. 96-272, § 102(a)(2), redesignated subsection (d) as subsection (h), effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983; and from and after October 1, 1983, this subsection shall read as if this amendment had not been enacted.

[157] P.L. 96-272, § 101(a)(1), added § 473, effective June 17, 1980.

See P.L. 96-272, § 101(a)(4)(B), with respect to interstate agreements, in Vol. II, p. 1508.

[158] P.L. 96-272, § 102(a)(3)(A), added ", either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or 403) or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983; and from and after October 1, 1983, § 473(a)(1)(A)(i) shall read as it would if this amendment had not been enacted.

(ii) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits,

(B)(i) received aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or [159] court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 406(a) within six months prior to the month in which such agreement was entered into or [160] such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

(iii) is a child described in subparagraph (A)(ii), and

(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

(2) The amount of the adoption assistance payments shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(3) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(4) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c), to be

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[159] P.L. 96-272, § 102(a)(3)(B), added "such agreement was entered into or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983; and from and after October 1, 1983, § 473(a)(1)(B)(i) shall read as it would if this amendment had not been enacted.

[160] P.L. 96-272, § 102(a)(3)(C), added "such agreement was entered into or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983; and from and after October 1, 1983, § 473(a)(1)(B)(ii) shall read as it would if this amendment had not been enacted.

a child with special needs) is placed for adoption, pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(b) For purposes of titles XIX and XX, any child with respect to whom adoption assistance payments are made under this section shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title.

(c) For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section.

PAYMENTS TO STATES; ALLOTMENTS TO STATES [161]

SEC. 474. [42 U.S.C. 674] (a) For each quarter beginning after September 30, 1980, each State which has a plan approved under this part (subject to the limitations imposed by subsection (b)) shall be entitled to a payment equal to the sum of—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as foster care maintenance payments under section 472 for children in foster family homes or child-care institutions; plus

(2) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as adoption assistance payments under section 473 pursuant to adoption assistance agreements; plus

(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students

[161] P.L. 96-272, § 101(a)(1), added § 474, effective June 17, 1980.

enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision, and

(B) one-half of the remainder of such expenditures.

(b)(1) Notwithstanding the provisions of subsections (a)(1) and (a)(3), the aggregate of the sums payable thereunder to any State (other than a State subject to limitation under section 1108(a)) with respect to expenditures relating to foster care, for the calendar quarters in any of the fiscal years 1981 through 1984 in which the conditions set forth in paragraph (2) are met, shall not exceed the State's allotment for such year.

(2)(A) The limitation in paragraph (1) shall apply—

(i) with respect to fiscal year 1981, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $163,550,000;

(ii) with respect to fiscal year 1982, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $220,000,000;

(iii) with respect to fiscal year 1983, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000; and

(iv) with respect to fiscal year 1984, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000.

(B) The limitations set forth in paragraph (1) with respect to the fiscal years 1982 through 1984 shall apply only if the required appropriation is made in advance in an appropriation Act (as authorized under section 420(b)) for the fiscal year preceding the fiscal year to which the limitation would apply.

(3) For purposes of this subsection, a State's allotment for any fiscal year shall be the greater of—

(A) the amount determined under paragraph (4);

(B) an amount which bears the same ratio to $100,000,000 as the under age eighteen population of such State bears to the under age eighteen population of the fifty States and the District of Columbia; or

(C) at the option of the State, an amount determined under paragraph (5), but only in the case of a State which meets the requirements of such paragraph (5).

(4) For purposes of paragraph (3)(A), a State's allotment shall be determined as follows:

(A) The allotment for any State for fiscal year 1980 shall be an amount equal to such State's base amount (as determined under subparagraph (c) [161A]) increased by 21.2 percent.

(B) The allotment for any State for each of the fiscal years 1981 through 1984 shall be an amount equal to such State's allotment for the preceding fiscal year, increased or decreased by a percentage equal to twice the percentage increase or decrease (as the case may be) (but not to exceed an increase or decrease of 10 percent) in the Consumer Price Index prepared by the Department of Labor, and used in determining cost-of-

[161A] As in original. Should be "subparagraph (C)".

living adjustments under section 215(i) of this Act, for the second quarter of the preceding fiscal year as compared to such index for the second quarter of the second preceding fiscal year. For purposes of this subparagraph the Consumer Price Index for any quarter shall be the arithmetical mean of such index for the three months in such quarter.

(C) The base amount shall be equal to the amount of the Federal funds payable to such State for fiscal year 1978 under section 403 on account of expenditures for aid with respect to which Federal financial participation is authorized in payments pursuant to section 408 (including administrative expenditures attributable to the provision of such aid as determined by the Secretary) and for those States which in fiscal year 1978 did not make foster care maintenance payments under section 408 on behalf of children otherwise eligible for such payment, solely because their foster care was provided by related persons, shall be equal to the total amount of Federal funds the State would have been entitled to be paid under section 403 on account of expenditures pursuant to section 408 for that fiscal year if such payments had been made. In the event that there is a dispute between any State and the Secretary as to the amount of such expenditures for such fiscal year, then, until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, the base amount shall be deemed to be the amount of Federal funds which would have been payable under section 403 if the amount of such expenditures were equal to the amount thereof claimed by the State.

(5)(A) For purposes of paragraph (3)(C), a State's allotment for any fiscal year ending after September 30, 1980, and before October 1, 1984, may, at the option of the State (and if the State meets the requirements of subparagraphs (B) and (C)), be determined by application of the provisions of paragraph (4) with the following modifications:

(i) The base amount for purposes of determining an allotment for any such fiscal year shall be equal to the base amount determined under paragraph (4)(C) increased by a percentage equal to the percentage by which the average monthly number of children in such State receiving aid with respect to which Federal financial participation is authorized in payments pursuant to section 408, or receiving foster care maintenance payments with respect to which Federal financial participation is authorized under this part, for such fiscal year exceeds the average monthly number of such children for fiscal year 1978.

(ii) For purposes of clause (i), the percentage determined under such clause shall not exceed 33.1 percent in the case of fiscal year 1981, 46.4 percent in the case of fiscal year 1982, 61.1 percent in the case of fiscal year 1983, or 77.2 percent in the case of fiscal year 1984.

(B) No State may exercise the option to have its allotment amount determined under the provisions of this paragraph unless, for fiscal year 1978, the average monthly number of children in such State receiving aid for which Federal financial participation is

authorized in payments pursuant to section 408 as a percentage of the under age eighteen population of such State, was less than the average such percentage for the fifty States and the District of Columbia.

(C) No State may exercise the option to have its allotment determined under this paragraph for any fiscal year other than fiscal year 1981 after the first fiscal year (after fiscal year 1978) with respect to which the average monthly number of children in such State receiving aid for which Federal financial participation is authorized in payments pursuant to section 408, or receiving foster care maintenance payments for which Federal financial participation is authorized under this part, as a percentage of the under age eighteen population of such State, was equal to or greater than the average such percentage for the fifty States and the District of Columbia for the fiscal year 1978. Any allotment determined under this paragraph for a State which opted to have its allotment so determined under this paragraph for the fiscal year prior to the first fiscal year for which its option may not be exercised by reason of the preceding sentence shall be considered to be such State's allotment for such prior fiscal year for purposes of determining allotments for subsequent fiscal years under paragraph (4).

(D) In determining the number of children receiving aid for which Federal financial participation is authorized in payments under section 408 or under this part, for any fiscal year, with respect to any State and with respect to the national average for purposes of subparagraphs (B) and (C), there shall be included those children with respect to whom foster care maintenance payments were not made under section 408 or this part (though they were otherwise eligible for such payments) solely because their foster care was provided by related persons. In the event that there is a dispute between any State and the Secretary as to the number of such children (with respect to whom foster care maintenance payments were not made) for any fiscal year, then until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, determinations under subparagraphs (B) and (C) shall be made on the basis of the number of such children claimed by the State.

(E) The Secretary shall promulgate an interim allotment amount for purposes of this paragraph for each fiscal year for each State exercising its option to have its allotment determined under this paragraph, based on the most recent satisfactory data available, not later than six months after the beginning of such fiscal year. The amount of such allotment shall be adjusted, and the final allotment amount shall be promulgated, based on the most recent satisfactory data available, not later than nine months after the end of such fiscal year.

(6) Except in the case of a State which loses the option of having its allotment determined under paragraph (5) by reason of the provisions of paragraph (5)(C), and subject to the provisions of such paragraph (5)(C), the amount of any allotment as determined in accordance with subparagraph (A), (B), or (C) of paragraph (3) for any fiscal year for any State shall be determined in accordance with the provisions of such subparagraph, without regard to the

amount of such State's allotment for any prior fiscal year as determined in accordance with another such subparagraph.[162]

(c)(1) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is in effect, sums available to a State from its allotment under subsection (b) for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this title, in addition to sums available pursuant to section 420 for carrying out part B.

(2) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is not in effect, a State may claim as reimbursement for expenditures for such year pursuant to part B of this title, in addition to amounts claimed under section 420, an amount equal to the amount by which the State's allotment amount for such fiscal year (as determined under subsection (b)(3)) exceeds the amount claimed by such State for such fiscal year as reimbursement for expenses relating to foster care under subsection (a); except that the total amount claimed by such State for such fiscal year under this paragraph, when added to the amount that such State receives for such fiscal year under section 420, may not exceed the amount that would have been payable to such State under section 420 for such fiscal year if the relvant[162A] amount described in subsection (b)(2)(A) had been appropriated for such fiscal year.

(3) The provisions of paragraphs (1) and (2) shall not apply for any fiscal year with respect to any State which, with respect to such fiscal year, exercised its option to have its allotment amount determined under subsection (b)(5).

(4)(A) No State may claim an amount under the provisions of this subsection as reimbursement for expenditures for any fiscal year pursuant to part B of this title to the extent that such amount, plus the amount claimed by such State for such fiscal year under section 420, exceeds the amount which would be allotted to such State under part B if the amount appropriated under section 420 were $141,000,000, unless such State has met the requirements set forth in section 427(a).

(B) If, for each of any two consecutive fiscal years, there is appropriated under section 420 a sum equal to $266,000,000, no State may claim any amount under the provisions of this subsection as reimbursement for expenditures for any succeeding fiscal year pursuant to part B of this title unless such State has met the requirements set forth in section 427(b).

(C) If, for each of any two fiscal years during which the limitation under subsection (b)(1) is not in effect, the total amount claimed by a State as reimbursement for expenditures pursuant to part B under this subsection and under section 420 equals the amount which would be allotted to such State for such fiscal year under part B if the amount appropriated under section 420 were

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[162] See P.L. 96-272, § 101(a)(2), with respect to the applicability of § 408 (repealed) to a State plan approved under part E of this title, in Vol. II, p. 1507.

[162A] As in original. Should be "relevant".

$266,000,000, such State may not claim any amount under the provisions of paragraph (2) as reimbursement for expenditures for any succeeding fiscal year pursuant to part B of this title unless such State has met the requirements set forth in section 427(b).

(d)(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsections (a), (b), and (c) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (c) [162B] such other investigation as the secretary [162C] may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.[163]

DEFINITIONS [164]

SEC. 475. [42 U.S.C. 675] As used in this part or part B of this title:

(1) The term "case plan" means a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or [165] judicial determination made with respect to the child in accordance with section 472(a)(1); and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discus-

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[162B] As in original. Should be "(C)".
[162C] As in original. Should be "Secretary".
[163] P.L. 96-611, § 3, added subsection (d), effective December 28, 1980.
[164] P.L. 96-272, § 101(a)(1), added § 475, effective June 17, 1980.
[165] P.L. 96-272, § 102(a)(4), added "voluntary placement agreement entered into or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1983; and from and after October 1, 1983, § 475(1) shall read as if this amendment had not been enacted.

sion of the appropriateness of the services that have been provided to the child under the plan.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.[166] The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(5) The term "case review system" means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months

[166] P.L. 96-272, § 101(a)(4)(A), provides that this clause (B) shall be effective with respect to adoption assistance agreements entered into on or after October 1, 1983.

after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis); and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

TECHNICAL ASSISTANCE; DATA COLLECTION AND EVALUATION [167]

SEC. 476. [42 U.S.C. 676] (a) The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this title and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

[167] P.L. 96-272, § 101(a)(1), added § 476, effective June 17, 1980.

TITLE V—MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES [1]

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AUTHORIZATION OF APPROPRIATIONS

SEC. 501. [42 U.S.C. 701] For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State,

(1) services for reducing infant mortality and otherwise promoting the health of mothers and children; and

(2) services for locating, and for medical, surgical, corrective, and other services and care for and facilities for diagnosis, hospitalization, and aftercare for, children who are crippled or who are suffering from conditions leading to crippling,

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[1] Title V of the Social Security Act is administered by the Office of Human Development Services, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). Title V appears in the United States Code as §§ 701–716, subchapter V, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title V are contained in chapters I and II, title 42, and in subtitle A, title 45, Code of Federal Regulations.

See P.L. 82-452, Social Security Administration (42 USC 704b), with respect to the limitation on availability of allotments under title V, in Vol. II, p. 1529.

See P.L. 88-352 (Civil Rights Act of 1964), for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 90-577, §§ 2-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 92-603, § 402, with respect to transitional administrative provision, in Vol. II, p. 1467.

See P.L. 93-233, § 16, with respect to the basis of medicare payments for services provided by agencies and providers, in Vol. II, p. 1617.

See P.L. 93-510, §§ 2-13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 113, § 1428, with respect to nutritional status monitoring, in Vol. II, p. 1678.

See § 1124 of this act with respect to disclosure of ownership and related information.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

See P.L. 95-626 (Health Services and Centers Amendments of 1978), § 606(a)(15), with respect to requirements for grant approval under that law, in Vol. II, p. 1710.

[2] This table of contents does not appear in the law.

there are authorized to be appropriated $250,000,000 for the fiscal year ending June 30, 1969, $275,000,000 for the fiscal year ending June 30, 1970, $300,000,000 for the fiscal year ending June 30, 1971, $325,000,000 for the fiscal year ending June 30, 1972, $350,000,000 for the fiscal year ending June 30, 1973, and for each of the next four fiscal years, and $399,864,200 for the fiscal year ending September 30, 1978, and for [3] each fiscal year thereafter.

PURPOSES FOR WHICH FUNDS ARE AVAILABLE [4]

SEC. 502. [42 U.S.C. 702] Appropriations pursuant to section 501 shall be available for the following purposes in the following proportions:

(1) In the case of the fiscal year ending June 30, 1969, and each of the next 5 [5] fiscal years, (A) 50 percent of the appropriation for such year shall be for allotments pursuant to sections 503 and 504; (B) 40 percent thereof shall be for grants pursuant to sections 508, 509, and 510; and (C) 10 percent thereof shall be for grants, contracts, or other arrangements pursuant to sections 511 and 512.

(2) In the case of the fiscal year ending June 30, 1975 [6], and each fiscal year thereafter, (A) 90 percent of the appropriation for such years shall be for allotments pursuant to sections 503 and 504; and (B) 10 percent thereof shall be for grants, contracts, or other arrangements pursuant to sections 511 and 512.

Not to exceed 5 percent of the appropriation for any fiscal year under this section shall be transferred, at the request of the Secretary, from one of the purposes specified in paragraph (1) or (2) to another purpose or purposes so specified. For each fiscal year, the Secretary shall determine the portion of the appropriation, within the percentage determined above to be available for sections 503 and 504, which shall be available for allotment pursuant to section 503 and the portion thereof which shall be available for allotment pursuant to section 504. Notwithstanding the preceding provisions of this section, of the amount appropriated for any fiscal year pursuant to section 501, not less than 6 percent of the amount appropriated shall be available for family planning services from allotments under section 503 and for family planning services under projects under sections 508 and 512.

ALLOTMENTS TO STATES FOR MATERNAL AND CHILD HEALTH SERVICES [7]

SEC. 503. [42 U.S.C. 703] The amount determined to be available pursuant to section 502 for allotments under this section shall be allotted for payments for maternal and child health services as follows:

(1) One-half of such amount shall be allotted by allotting to each State $70,000 plus such part of the remainder of such one-half as he finds that the number of live births in such State

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[3] P.L. 95-83, § 309(a), added "for each of the next four fiscal years, and $399,864,200 for the fiscal year ending September 30, 1978, and for", effective August 1, 1977.

[4] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year.

[5] P.L. 93-53, § 4(a)(1), deleted "4" and substituted "5", effective July 1, 1973.

[6] P.L. 93-53, § 4(a)(2), deleted "1974" and substituted "1975", effective July 1, 1973.

[7] See P.L. 94-274, § 101(b), with respect to allotments for the period of July 1, 1976, through September 30, 1976, in Vol. II, p. 1660.

bore to the total number of live births in the United States in the latest calendar year for which he has statistics.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of live births in such State; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 505), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of maternal and child health.

ALLOTMENTS TO STATES FOR CRIPPLED CHILDREN'S SERVICES [7]

SEC. 504. [42 U.S.C. 704] The amount determined to be available pursuant to section 502 for allotments under this section shall be allotted for payments for crippled children's services as follows:

(1) One-half of such amount shall be allotted by allotting to each State $70,000 and allotting the remainder of such one-half according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in paragraph (2) of section 501 and the cost of furnishing such services to them.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of crippled children in each State in need of the services referred to in paragraph (2) of section 501 and the cost of furnishing such services to them; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 505), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of services for crippled children.

APPROVAL OF STATE PLANS

SEC. 505. [42 U.S.C. 705] (a) In order to be entitled to payments from allotments under section 502, a State must have a State plan for maternal and child health services and services for crippled children which—

(1) provides for financial participation by the State;

(2) provides for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; except that in the case of those States which on July 1, 1967, provided for administration (or supervision thereof) of the State plan approved under section 513 (as in effect on such date) by a State agency other than the State health agency, the plan of such State may be approved under this section if it would meet the requirements

of this subsection except for provision of administration (or supervision thereof) by such other agency for the portion of the plan relating to services for crippled children, and, in each such case, the portion of such plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title;

(3) provides (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient operation of the plan [8] and (B) provides for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(4) provides that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) provides for cooperation with medical, health, nursing, educational, and welfare groups and organizations and, with respect to the portion of the plan relating to services for crippled children, with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children;

(6) provides for payment of the reasonable cost of inpatient hospital services provided under the plan, as determined in accordance with methods and standards, consistent with section 1122, which shall be developed by the State and included in the plan, except that the reasonable cost of any such services as determined under such methods and standards shall not exceed the amount which would be determined under section 1861(v) as the reasonable cost of such services for purposes of title XVIII;

(7) provides, with respect to the portion of the plan relating to services for crippled children, for early identification of children in need of health care and services, and for health care and treatment needed to correct or ameliorate defects or chronic conditions discovered thereby, through provision of such periodic screening and diagnostic services, and such treatment, care and other measures to correct or ameliorate defects or chronic conditions, as may be provided in regulations of the Secretary;

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[8] P.L. 91-648, § 208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). See P.L. 91-648, § 208(a)(3)(D), in Vol. II, p. 1598.

(8) effective July 1, 1974 [9], provides a program (carried out directly or through grants or contracts) of projects described in section 508 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily helping to reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with child bearing and of satisfactorily helping to reduce infant and maternal mortality;

(9) effective July 1, 1974 [9], provides a program (carried out directly or through grants or contracts) of projects described in section 509 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the health of children and youth of school or preschool age;

(10) effective July 1, 1974 [9], provides a program (carried out directly or through grants or contracts) of projects described in section 510 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the dental health of children and youth of school or preschool age;

(11) provides for carrying out the purposes specified in section 501;

(12) provides for the development of demonstration services (with special attention to dental care for children and family planning services for mothers) in needy areas and among groups in special need;

(13) provides that, where payment is authorized under the plan for services which an optometrist is licensed to perform, the individual for whom such payment is authorized may, to the extent practicable, obtain such services from an optometrist licensed to perform such services except where such services are rendered in a clinic, or another appropriate institution, which does not have an arrangement with optometrists so licensed;

(14) provides that acceptance of family planning services provided under the plan shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to eligibility for or the receipt of any service under the plan;

(15) provides—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of services under the plan and, where applicable, for providing guidance with respect thereto to the other State agency referred to in paragraph (2); and

(B) that the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1864(a), or, if such agency is not the State agency

[9] P.L. 93-53, § 4(a), deleted "1973" and substituted "1974", effective July 1, 1973.

which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform the function of determining whether institutions and agencies meet the requirements for participation in the program under the plan under this title; and

(16) provides (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for entities also providing services under title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part [9A], and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1129(a).[10]

(b) The Secretary shall approve any plan which meets the requirements of subsection (a).

PAYMENTS

SEC. 506. [42 U.S.C. 706] (a) From the sums appropriated therefor and the allotments available under section 503(1) or 504(1), as the case may be, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing July 1, 1968, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan with respect to maternal and child health services and services for crippled children, respectively.

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

[9A] As in original. Should be "title".

[10] P.L. 96-499, § 914(c)(1), added paragraph (16), effective with respect to services provided, under a State plan approved under title V of the Social Security Act, on and after April 1, 1981.

(c) The Secretary shall also from time to time make payments to the States from their respective allotments pursuant to section 503(2) or 504(2). Payments of grants under sections 503(2), 504(2), 508, 509, 510, and 511, and of grants, contracts, or other arrangements under section 512, may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the section involved.

(d) The total amount determined under subsections (a) and (b) and the first sentence of subsection (c) for any fiscal year ending after June 30, 1968, shall be reduced by the amount by which the sum expended (as determined by the Secretary) from non-Federal sources for maternal and child health services and services for crippled children for such year is less than the sum expended from such sources for such services for the fiscal year ending June 30, 1968. In the case of any such reduction, the Secretary shall determine the portion thereof which shall be applied, and the manner of applying such reduction, to the amounts otherwise payable from allotments under section 503 or section 504.[11]

(e) Notwithstanding the preceding provisions of this section, no payment shall be made to any State thereunder from the allotments under section 503 or section 504 for any period after June 30, 1968, unless the State makes a satisfactory showing that it is extending the provisions of services, including services for dental care for children and family planning for mothers, to which such State's plan applies in the State with a view to making such services available by July 1, 1975, to children and mothers in all parts of the State.

(f) Notwithstanding the preceding provisions of this section, no payment shall be made to any State thereunder—

(1) with respect to any amount paid for items or services furnished under the plan after December 31, 1972, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under the fourth and fifth sentences of section 1842(b)(3); or

(2) with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under title XVIII with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1862(d)(1) or under clause (D), (E), or (F) of section 1866(b)(2); or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment

[11] See P.L. 94-274, § 101(a), regarding the period July 1, 1976, through September 30, 1976, and the conditions to which the exercise of authority for that period is subject, in Vol. II, p. 1659.

which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for services furnished under the plan by a hospital unless such hospital has in effect a utilization review plan which meets the requirement imposed by section 1861(k) for purposes of title XVIII; and if such hospital has in effect such a utilization review plan for purposes of title XVIII, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this title; the Secretary is authorized to waive the requirements of this paragraph in any State if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1861(k).[12]

(g) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

OPERATION OF STATE PLANS

SEC. 507. [42 U.S.C. 707] If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 505; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

SPECIAL PROJECT GRANTS FOR MATERNITY AND INFANT CARE

SEC. 508. [42 U.S.C. 708] (a) In order to help reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with childbearing and to help reduce infant and maternal mortality, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 502, grants to the State health agency of any State and, with the consent of such agency, to the health agency of any political subdivision of the State, and to any other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost (exclusive of general agency overhead) of any project for the provision of—

[12] See § 1124 of this Act (as added by P.L. 95-142, § 3), regarding disclosure of ownership and related information.

(1) necessary health care to prospective mothers (including, after childbirth, health care to mothers and their infants) who have or are likely to have conditions associated with childbearing or are in circumstances which increase the hazards to the health of the mothers or their infants (including those which may cause physical or mental defects in the infants), or

(2) necessary health care to infants during their first year of life who have any condition or are in circumstances which increase the hazards to their health, or

(3) family planning services,

but only if the State or local agency determines that the recipient will not otherwise receive such necessary health care or services because he is from a low-income family or for other reasons beyond his control. Acceptance of family planning services provided under a project under this section (and section 512) shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to the eligibility for or the receipt of any service under such project.

(b) No grant may be made under this section for any project for any period after June 30, 1974 [13].

SPECIAL PROJECT GRANTS FOR HEALTH OF SCHOOL AND PRESCHOOL CHILDREN

SEC. 509. [42 U.S.C. 709] (a) In order to promote the health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 502, grants to the State health agency of any State and (with the consent of such agency) to the health agency of any political subdivision of the State, to the State agency of the State administering or supervising the administration of the State plan approved under section 505, to any school of medicine (with appropriate participation by a school of dentistry), and to any teaching hospital affiliated with such a school, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for health care and services for children and youth of school age or for preschool children (to help them prepare to start school). No project shall be eligible for a grant under this section unless it provides (1) for the coordination of health care and services provided under it with, and utilization (to the extent feasible) of, other State or local health, welfare, and education programs for such children, (2) for payment of (A) the reasonable cost (as determined in accordance with standards, consistent with section 1122, approved by the Secretary) of inpatient hospital services provided under the project, or (B) if less, the customary charges with respect to such services provided under the project, or (C) if such services are furnished under the project by a public institution free of charge or at nominal charges to the public, an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such institution for such services, and (3) that any treatment, correction of defects,

[13] P.L. 93-53, § 4(a)(6), deleted "1973" and substituted "1974", effective July 1, 1973.

or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control; and no such project for children and youth of school age shall be considered to be of a comprehensive nature for purposes of this section unless it includes (subject to the limitation in the preceding provisions of this sentence) at least such screening, diagnosis, preventive services, treatment, correction of defects, and aftercare, both medical and dental, as may be provided for in regulations of the Secretary.

(b) No grant may be made under this section for any project for any period after June 30, 1974 [14].

SPECIAL PROJECT GRANTS FOR DENTAL HEALTH OF CHILDREN

SEC. 510. [42 U.S.C. 710] (a) In order to promote the dental health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make grants, from the sums available under clause (B) of paragraph (1) of section 502, to the State health agency of any State and (with the consent of such agency) to the health agency of any political subdivision of the State, and to any other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for dental care and services for children and youth of school age or for preschool children. No project shall be eligible for a grant under this section unless it provides that any treatment, correction of defects, or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control, and unless it includes (subject to the limitation of the foregoing provisions of this sentence) at least such preventive services, treatment, correction of defects, and aftercare, for such age groups, as may be provided in regulations of the Secretary. Such projects may also include research looking toward the development of new methods of diagnosis or treatment, or demonstration of the utilization of dental personnel with various levels of training.

(b) No grant may be made under this section for any project for any period after June 30, 1974 [14].

TRAINING OF PERSONNEL

SEC. 511. [42 U.S.C. 711] From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 502, the Secretary is authorized to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children, particularly mentally retarded children and children with multiple handicaps. In making such grants, the Secretary shall give special attention to programs providing training at the undergraduate level.

[14] P.L. 93-53, § 4(a), deleted "1973" and substituted "1974", effective July 1, 1973.

RESEARCH PROJECTS RELATING TO MATERNAL AND CHILD HEALTH SERVICES AND CRIPPLED CHILDREN'S SERVICES

SEC. 512. [42 U.S.C. 712] From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 502, the Secretary is authorized to make grants to or jointly financed cooperative arrangements with public or other nonprofit institutions of higher learning, and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or crippled children's programs, and contracts with public or nonprofit private agencies and organizations engaged in research or in such programs, for research projects relating to maternal and child health services or crippled children's services which show promise of substantial contribution to the advancement thereof. Effective with respect to grants made and arrangements entered into after June 30, 1968, (1) special emphasis shall be accorded to projects which will help in studying the need for, and the feasibility, costs, and effectiveness of, comprehensive health care programs in which maximum use is made of health personnel with varying levels of training, and in studying methods of training for such programs, and (2) grants under this section may also include funds for the training of health personnel for work in such projects.

ADMINISTRATION

SEC. 513. [42 U.S.C. 713] (a) The Secretary of Health, Education, and Welfare shall make such studies and investigations as will promote the efficient administration of this title.

(b) Such portion of the appropriations for grants under section 501 as the Secretary may determine, but not exceeding one-half of 1 percent thereof, shall be available for evaluation by the Secretary (directly or by grants or contracts) of the programs for which such appropriations are made and, in the case of allotments from any such appropriation, the amount available for allotments shall be reduced accordingly.

(c) Any agency, institution, or organization shall, if and to the extent prescribed by the Secretary, as a condition to receipt of grants under this title, cooperate with the State agency administering or supervising the administration of the State plan approved under title XIX in the provision of care and services, available under a plan or project under this title, for children eligible therefor under such plan approved under title XIX.

DEFINITION

SEC. 514. [42 U.S.C. 714] For purposes of this title, a crippled child is an individual under the age of 21 who has an organic disease, defect, or condition which may hinder the achievement of normal growth and development.

OBSERVANCE OF RELIGIOUS BELIEFS

SEC. 515. [42 U.S.C. 715] Nothing in this title shall be construed to require any State which has any plan or program approved under, or receiving financial support under, this title to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services pro-

vided under such plan or program for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

SUPPLEMENTAL ALLOTMENTS [15]

SEC. 516. [42 U.S.C. 716] (a)(1) For each fiscal year (commencing with the fiscal year ending June 30, 1975), there shall (subject to paragraph (2)) be allotted to each State (from funds appropriated for such fiscal year pursuant to subsection (b)) an amount, which shall be in addition to and available for the same purposes as the allotments of such State (as determined under sections 503 and 504), equal to the excess (if any) of—

(A) the amount of the allotment of such State (as determined under sections 503 and 504) for the fiscal year ending June 30, 1973, plus the amounts of any grants to such States under sections 508, 509, and 510, over

(B) the amount of the allotment of such State (as determined under sections 503 and 504) for such fiscal year which commences after June 30, 1973.

(2) No State shall receive an allotment under this section for any fiscal year, unless such State (in the administration of its State plan, approved under section 505) has in effect arrangements which the Secretary finds will provide for the continuation of appropriate services to population groups previously receiving services from funds made available (for the fiscal year ending June 30, 1974) to such State pursuant to sections 508, 509, and 510.

(b)(1)(A) There are (subject to subparagraph (B)) hereby authorized to be appropriated for each fiscal year (commencing with the fiscal year ending June 30, 1975) such amounts as may be necessary to enable the Secretary to make the allotments authorized under subsection (a).[16]

(B) Nothing contained in subparagraph (A) shall be construed to authorize, for any fiscal year, the appropriation under this subsection of any amount which is in excess of the amount by which—

(i) the amount authorized to be appropriated under section 501 for such year exceeds

(ii) the total amounts appropriated pursuant to section 501 for such year.

(2) If, for any fiscal years, the total amount appropriated pursuant to paragraph (1) is less than the total amount allotted to all States under subsection (a), then the amount of the allotment of each State (as determined under subsection (a)) shall be reduced to an amount which bears the same ratio to the total amount appropriated pursuant to paragraph (1) for such fiscal year as the amount of the allotment of such State (as determined under subsection (a)) bears to the total amount allotted to all States under subsection (a) for such fiscal year.

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[15] P.L. 93-53, § 4(b), added § 516, effective July 1, 1973. See P.L. 93-53, § 4(c), with respect to computation of State's allotment, in Vol. II, p. 1607.

[16] See P.L. 94-274, § 101(a), regarding the period July 1, 1976, through September 30, 1976, and the conditions to which the exercise of authority for that period is subject, in Vol. II, p. 1659.

[TITLE VI—GRANTS TO STATES FOR SERVICES TO THE AGED, BLIND, OR DISABLED][1]

[1] P.L. 92-603, § 302, 86 Stat. 1478, added title VI, effective January 1, 1974.

See P.L. 92-603, § 402, with respect to transitional administrative provision, in Vol. II, p. 1467.

See P.L. 95-291, §§ 1, 2, and 5, with respect to reimbursement of certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

P.L. 93-647, § 3(b), 88 Stat. 2349, repealed title VI, effective with respect to payments under § 603 of this act for quarters commencing after September 30, 1975. For title VI as it formerly read, see Vol. II, p. 1764.

Social Security Act §§ 1115(a), (a)(1), (a)(2); 1116(a)(1), (a)(2), (a)(3), (b), (d); 1902(a)(20)(C); and 2003(b) contain references to title VI.

TITLE VII—ADMINISTRATION [1]

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OFFICE OF COMMISSIONER FOR SOCIAL SECURITY

SECTION 701. [42 U.S.C. 901] There shall be in the Federal Security Agency a Commissioner for Social Security, appointed by the Administrator, who shall perform such functions relating to social security as the Administrator shall assign to him.[3]

DUTIES OF SECRETARY [4]

SEC. 702. [42 U.S.C. 902] The Secretary of Health, Education, and Welfare shall perform the duties imposed upon him by this

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[1] Title VII of the Social Security Act is administered by the Office of the Secretary, Office of Commissioner for Social Security, and Department of Health and Human Services.

Title VII appears in the United States Code as §§ 901–909 of subchapter VII, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services (formerly Secretary of Health, Education, and Welfare) relating to title VII are contained in subtitle A and chapter II, title 45, Code of Federal Regulations.

See P.L. 88-352 (Civil Rights Act of 1964), for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 90-577, §§ 2-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 93-510, §§ 2-13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 95-216, § 361, regarding establishment of a National Commission on Social Security, in Vol. II, p. 1500.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

[2] This table of contents does not appear in the law.

[3] Reorganization Plan No. 1 of 1953, § 8, effective April 11, 1953 (18 F.R. 2053; 67 Stat. 631), abolished the office of Commissioner for Social Security in the Federal Security Agency. That reorganization plan, in § 4, established the position of Commissioner of Social Security in the Department of Health, Education, and Welfare. See Preface in Vol. I, p. iii.

[4] P.L. 74-271, § 702, effective August 14, 1935, imposed these duties on the Social Security Board. See Preface in Vol. I, p. iii.

Reorganization Plan No. 2 of 1949 transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which was also transferred to the Department of Labor from the Federal Security Agency). Reorganization Plan No. 19 of 1950 transferred the Bureau of Employees' Compensation from the Federal Security Agency (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties,

Continued

Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

EXPENSES OF THE SECRETARY

SEC. 703. [42 U.S.C. 903] The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

REPORTS

SEC. 704. [42 U.S.C. 904] The Secretary shall make a full report to Congress, within one hundred and twenty days after [5] the beginning of each regular session, of the administration of the functions with which he is charged under this Act. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

TRAINING GRANTS FOR PUBLIC WELFARE PERSONNEL [6]

SEC. 705. [42 U.S.C. 906] (a) In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000.

(b) Such portion of the sums appropriated pursuant to subsection (a) for any fiscal year as the Secretary may determine, but not in excess of $1,000,000 in the case of the fiscal year ending June 30, 1963, and $2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f). From the remainder of the sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

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the provisions of this section of the Social Security Act also apply to the Secretary of Labor. See Vol. II, p. 1153.

See P.L. 95-216, § 311, regarding study of universal coverage, in Vol. II, p. 1497.

See P.L. 95-216, § 341, regarding study of proposals to eliminate dependency and sex discrimination under the social security program, in Vol. II, p. 1500.

[5] P.L. 94-273, § 33, deleted "at" and substituted "within one hundred and twenty days after", effective April 21, 1976.

[6] P.L. 94-274, § 101(a), provides that the term "fiscal year" includes the period of July 1, 1976, through September 30, 1976. See P.L. 94-274, § 101(a), regarding the conditions to which the exercise of authority for the July 1, 1976, through September 30, 1976, period is subject, in Vol. II, p. 1659.

(c) From each State's allotment under subsection (b), the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted under regulations of the Secretary.

(d) Payments pursuant to subsection (c) shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of overpayments or underpayments in amounts previously paid.

(e) The amount of any allotment to a State under subsection (b) for any fiscal year which the State certifies to the Secretary will not be required for carrying out the purposes of this section in such State shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallotments to be made on the basis provided in subsection (b) for the initial allotments to the States. Any amount so reallotted to a State shall be deemed part of its allotment under such subsection.

(f)(1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under this subsection to take account of overpayments or underpayments in amounts previously paid.

(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of his fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance pro-

gram. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this Act.

ADVISORY COUNCIL ON SOCIAL SECURITY [7]

SEC. 706. [42 U.S.C. 907] (a) During 1969 (but not before February 1, 1969) and every fourth year thereafter (but not before February 1 of such fourth year), the Secretary shall appoint an Advisory Council on Social Security for the purpose of reviewing the status of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund in relation to the long-term commitments of the old-age, survivors, and disability insurance program and the programs under parts A and B of title XVIII, and of reviewing the scope of coverage and the adequacy of benefits under, and all other aspects of, these programs, including their impact on the public assistance programs under this Act.

(b) Each such Council shall consist of a Chairman and 12 other persons, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers and represent self-employed persons and the public.

(c)(1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(2) Appointed members of any such Council, while serving on business of the Council (inclusive of travel time) shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code [8], for persons in the Government employed intermittently.

(d) Each such Council shall submit reports (including any interim reports such Council may have issued) of its findings and recommendations to the Secretary not later than January 1 of the second year after the year in which it is appointed, and such reports and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds. The reports required by this subsection shall include—

(1) a separate report with respect to the old-age, survivors, and disability insurance program under title II and of the

[7] See P.L. 92-463, approved October 6, 1972, with respect to provisions governing the operation of advisory committees, in Vol. II, p. 1601.

[8] See 5 U.S.C. 5703, in Vol. II, p. 1136.

taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954,

(2) a separate report with respect to the hospital insurance program under part A of title XVIII and of the taxes imposed by sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, and

(3) a separate report with respect to the supplementary medical insurance program established by part B of title XVIII and of the financing thereof.

After the date of the transmittal to the Congress of the reports required by this subsection, the Council shall cease to exist.*

GRANTS FOR EXPANSION AND DEVELOPMENT OF UNDERGRADUATE AND GRADUATE PROGRAMS

SEC. 707. [42 U.S.C. 908] (a) There is authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1969, and $5,000,000 for each of the three succeeding fiscal years, for grants by the Secretary to public or nonprofit private colleges and universities and to accredited graduate schools of social work or an association of such schools to meet part of the costs of development, expansion, or improvement of (respectively) undergraduate programs in social work and programs for the graduate training of professional social work personnel, including the costs of compensation of additional faculty and administrative personnel and minor improvements of existing facilities. Not less than one-half of the sums appropriated for any fiscal year under the authority of this subsection shall be used by the Secretary for grants with respect to undergraduate programs.

(b) In considering applications for grants under this section, the Secretary shall take into account the relative need in the States for personnel trained in social work and the effect of the grants thereon.

(c) Payment of grants under this section may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and on such terms and conditions and in such installments, as the Secretary may determine.

(d) For purposes of this section—

(1) the term "graduate school of social work" means a department, school, division, or other administrative unit, in a public or nonprofit private college or university, which provides, primarily or exclusively, a program of education in social work and allied subjects leading to a graduate degree in social work;

(2) the term "accredited" as applied to a graduate school of social work refers to a school which is accredited by a body or bodies approved for the purpose by the Commissioner of Education or with respect to which there is evidence satisfactory to

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* See P.L. 95-216, § 361, regarding establishment of a National Commission on Social Security, in Vol. II, p. 1500.

P.L. 95-216, § 372, effective December 20, 1977, provides that notwithstanding the provisions of § 706(d) of the Social Security Act, the report of the Advisory Council on Social Security which is due not later than January 1, 1979, may be filed at any date prior to October 1, 1979.

the Secretary that it will be so accredited within a reasonable time; and

(3) the term "nonprofit" as applied to any college or university refers to a college or university which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

DELIVERY OF BENEFIT CHECKS

SEC. 708. [42 U.S.C. 909] (a) If the day regularly designated for the delivery of benefit checks under title II or title XVI falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 of title 5, United States Code [10]) in any month, the benefit checks which would otherwise be delivered on such day shall be mailed for delivery on the first day preceding such day which is not a Saturday, Sunday, or legal public holiday (as so defined), without regard to whether the delivery of such checks would as a result have to be made before the end of the month for which such checks are issued.

(b) If more than the correct amount of payment under title II or XVI is made to any individual as a result of the receipt of a benefit check pursuant to subsection (a) before the end of the month for which such check is issued, no action shall be taken (under section 204 or 1631(b) or otherwise) to recover such payment or the incorrect portion thereof.[11]

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[10] Legal public holidays which may affect check delivery are (1) New Year's Day [January 1], (2) Independence Day [July 4], and Labor Day [first Monday in September].

[11] P.L. 95-216, § 333, added § 708, effective with respect to benefit checks which are for

[TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT] [1]

[1] P.L. 74-271, 49 Stat. 620, approved August 14, 1935, included title VIII.

P.L. 76-1, § 4, 53 Stat. 1, repealed title VIII, effective February 11, 1939.

History shows that P.L. 76-1 codified the Internal Revenue Code. The substance of title VIII then was included in the Internal Revenue Code of 1939 at §§ 1400-1425. Currently, the substance of title VIII may be found in the Internal Revenue Code of 1954 at §§ 3101-3126 (Subtitle C—Employment Taxes; Chapter 21—Federal Insurance Contributions Act). See Vol. I, p. 688.

Social Security Act §§ 205(c)(5)(F)(i) and 1106(a) contain references to title VIII.

TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY [1]

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[1] Title IX of the Social Security Act is administered by the Department of Labor.

Title IX appears in the United States Code as §§ 1101–1108, subchapter IX, chapter 7, title 42.

Regulations of the Secretary of Labor relating to title IX are contained in chapter V, title 20, Code of Federal Regulations.

See P.L. 79-291 (International Organizations Immunities Act), §§ 1 and 5(b), with respect to collection of taxes from international organizations, in Vol. II, p. 1276.

See P.L. 88-352 (Civil Rights Act of 1964), for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 90-577, §§ 2-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 93-567, §§ 201-210, with respect to the Emergency Jobs and Unemployment Assistance Act of 1974, in Vol. II, p. 1626.

See P.L. 93-618 (Trade Act of 1974), §§ 221-249, with respect to adjustment assistance for workers, in Vol. II, p. 1636.

See P.L. 95-19, § 106, with respect to the Emergency Unemployment Compensation Extension Act of 1977, in Vol. II, p. 1674.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

[2] This table of contents does not appear in the law.

EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT

Establishment of Account

SECTION 901. [42 U.S.C. 1101] (a) There is hereby established in the Unemployment Trust Fund an employment security administration account.

Appropriations to Account [3]

(b)(1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act [4] and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act [4] (including interest on such refunds).

Administrative Expenditures [5]

(c)(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law),

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[3] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of this subsection.

[4] The Federal Unemployment Tax Act is in §§ 3301-3311 of the Internal Revenue Code of 1954; see Vol. I, p. 737.

[5] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year.

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n [6]), and

(iii) carrying into effect section 2003 of title 38 of the United States Code [7];

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this title and titles III and XII of this Act,

(ii) the Federal Unemployment Tax Act [8],

(iii) the provisions of the Act of June 6, 1933, as amended [6],

(iv) chapter 41 (except section 2003) of title 38 of the United States Code [9], and

(v) any Federal unemployment compensation law.

The term "necessary expenses" as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this title and titles III and XII of this Act, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act [8], and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of section 901(f)(3)(A), an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by

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[6] See 29 U.S.C. 49–49n for the Act of June 6, 1933 (P.L. 73–30, Wagner-Peyser Act), in Vol. II, p. 1181.

[7] See 38 U.S.C. 2003, in Vol. II, p. 1209.

[8] The Federal Unemployment Tax Act is in §§ 3301–3311 of the Internal Revenue Code of 1954; see Vol. I, p. 737.

[9] See 38 U.S.C. 2001–2002A and 2004–2008, in Vol. II, p. 1208.

which the net receipts during such year under the Federal Unemployment Tax Act[8] will exceed the amount transferred under section 905(b) during such year to the extended unemployment compensation account.

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with section 901(f)(2)(B).

(C) Each estimate of net receipts under this paragraph shall be based upon (i) a tax rate of 0.5 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act[10] is 3.2 percent, and (ii) a tax rate of 0.7 percent in the case of any calendar year for which the rate of tax under such section 3301 is 3.4 percent.[11]

(4) For purposes of paragraphs (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended[6], and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

Additional Tax Attributable to Reduced Credits

(d)(1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act with respect to any State by reason of the reduced credits provisions of section 3302(c)(3) of such Act[12] and covered into the Treasury for the repayment of advances made to the State under section 1201, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1201 to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional

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[10] See Federal Unemployment Tax Act § 3301 as Internal Revenue Code § 3301, in Vol. I, p. 737.

[11] P.L. 94-566, § 211(e)(1), amended subparagraph (C) in its entirety, effective October 20, 1976. For subparagraph (C) as it formerly read, see Vol. II, p. 1783.

[12] See Federal Unemployment Tax Act § 3302(c)(3) as Internal Revenue Code § 3302(c)(3), in Vol. I, p. 739.

tax received and covered into the Treasury exceeds that balance of advances, made under section 1201 to the State, with respect to which employers paid such additional tax.

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2).

Revolving Fund

(e)(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.[13]

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

Determination of Excess and Amount To Be Retained in Employment Security Administration Account [14]

(f)(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June

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[13] P.L. 94-274, § 101(a), effective April 21, 1976, provides that the term "fiscal year" shall include the period of July 1, 1976, through September 30, 1976. For the conditions to which the exercise of authority pursuant to § 901(e)(2), for that period, shall be subject, see P.L. 94-274, § 101(a), in Vol. II, p. 1659.

[14] P.L. 94-274, § 101(a), effective April 21, 1976, provides that the term "fiscal year" shall include the period of July 1, 1976, through September 30, 1976. For the conditions to which the

Continued

30, 1961) the excess in the employment security administration account.

(2)(A) Except as provided in subparagraph (B), the excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 902(b) and section 901(f)(3)(C)) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(B) With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c).

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding [15] year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to the limit provided in section 905(b)(2).

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 905(b)(2), such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d), and

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exercise of authority pursuant to § 901(f), for that period, shall be subject, see P.L. 94-274, § 101(a), in Vol. II, p. 1659.

P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of this section.

[15] P.L. 94-273, § 39, deleted "fiscal", effective April 21, 1976.

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e).

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT AND REPORT TO CONGRESS [16]

Transfers to Federal Unemployment Account

SEC. 902. [42 U.S.C. 1102] (a) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year and the entire amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 901(f)(3), there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) $550 million, or

(2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

Transfers to Employment Security Administration Account

(b) The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) shall be transferred to the employment security administration account as of the close of such fiscal year.

Report to the Congress

(c) Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 901(f)(3)(A), and the Federal unemployment account will reach the limit provided for such account in section 902(a), and the extended unemployment compensation account will reach the limit provided for such account in section 905(b)(2), he shall, after consultation

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[16] P.L. 91-373, § 304(a), effective August 10, 1970, deleted "TRANSFERS BETWEEN FEDERAL UNEMPLOYMENT ACCOUNT AND EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT" and substituted "TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT AND REPORT TO CONGRESS".

P.L. 94-274, § 101(a), effective April 21, 1976, provides that the term "fiscal year" shall include the period of July 1, 1976, through September 30, 1976. For the conditions to which the exercise of authority pursuant to § 902, for that period, shall be subject, see P.L. 94-274, § 101(a), in Vol. II, p. 1659.

with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress.

AMOUNTS TRANSFERRED TO STATE ACCOUNTS [17]

In General

SEC. 903. [42 U.S.C. 1103] (a)(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 905(b)(2) and the amount in the Federal unemployment account has reached the limit provided in section 902(a) and all advances pursuant to section 905(d) and section 1203 have been repaid, and there remains in the employment security administration account any amount over the amount provided in section 901(f)(3)(A), such excess amount, except as provided in subsection (b), shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.[18]

(2) Each State's share of the funds to be transferred under this subsection as of any October [19] 1—

(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before September [20] 1, and

(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under such State's unemployment compensation law during the preceding calendar year which have been reported to the State before August [21] 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before August [21] 1.

Limitations on Transfers

(b)(1) If the Secretary of Labor finds that on October [22] 1 of any fiscal year—

(A) a State is not eligible for certification under section 303, or

(B) the law of a State is not approvable under section 3304 of the Federal Unemployment Tax Act [23],

then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such October [22] 1. If, during the fiscal year beginning on such October [22] 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that

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[17] P.L. 94-566, § 116(a), effective January 1, 1978, amended § 1101(a) of the Social Security Act to include the Virgin Islands in the definition of "State".

[18] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of this section.

[19] P.L. 94-273, § 3(23), effective April 21, 1976, deleted "July" and substituted "October".

[20] P.L. 94-273, § 2(20), effective April 21, 1976, deleted "June" and substituted "September".

[21] P.L. 94-273, § 23, deleted "May" and substituted "August", effective April 21, 1976.

[22] P.L. 94-273, § 3(23), deleted "July" and substituted "October", effective April 21, 1976.

[23] The Federal Unemployment Tax Act is in §§ 3301-3311 of the Internal Revenue Code of 1954; see Vol. I, p. 737.

such State is eligible for certification under section 303, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of October [22] 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.[24]

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1201. The sum by which such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before the date of the enactment of the Employment Security Act of 1960 [25] to the State under section 1201, and

(ii) second, any balance of advances made on or after such date [25] to the State under section 1201.

[(3) Repealed.] [26]

Use of Transferred Amounts

(c)(1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law making the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred after such date of enactment, and

(D) the appropriation law limits the total amount which may be obligated during a twelve-month period (as prescribed in the law of the State), or during a transitional period of less than twelve months caused by a change in the twelve-month period (as prescribed in the law of the State), to an amount which

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[24] P.L. 94-274, § 201(12), effective April 21, 1976, provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of this section.

[25] The Employment Security Act of 1960 was enacted on September 13, 1960. (Title V of P.L. 86-778, 74 Stat. 970).

[26] P.L. 93-368, § 4(b), repealed paragraph (3), effective August 7, 1974. For paragraph (3) as it formerly read, see Vol. II, p. 1761.

does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) during such twelve-month period or transitional period of less than twelve months and the twenty-four preceding twelve-month periods (including the transitional period of less than twelve months if it is within such twenty-four twelve-month periods) exceeds (ii) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State during such twenty-four twelve-month periods (and the transitional period of less than twelve months if it is within the twenty-four twelve-month periods).[27]

For the purposes of subparagraph (D), amounts used by a State during any twelve-month period or transitional period of less than twelve months shall be charged against equivalent amounts which were transferred and which have not previously been so charged; except that no amount obligated for administration during any such period may be charged against any amount transferred during a twelve-month period or transitional period of less than twelve months earlier than the twenty-fourth preceding twelve-month period (including the transitional period of less than twelve months if it is within such twenty-four twelve-month periods).[27]

UNEMPLOYMENT TRUST FUND

Establishment, etc.

SEC. 904. [42 U.S.C. 1104] (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary designated by him for such purpose, or with any Federal Reserve Bank.

Investments

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended,[28] are hereby extended to authorize the issuance at par

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[27] P.L. 94-273, § 41, amended subparagraph (D) and the sentence following subparagraph (D) in their entirety, effective April 21, 1976. For this subparagraph and sentence as they formerly read, see Vol. II, p. 1776.

[28] See 31 U.S.C. §§ 752 and 754, in Vol. II, p. 1195.

of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1203 shall not be invested.

Sale or Redemption of Obligations

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

Treatment of Interest and Proceeds

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

Separate Book Accounts

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed—

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1201, and

(2) in the case of the Federal unemployment account—

(A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and

(B) by subtracting from the sum so obtained the balance of advances made under section 1203 to the account.

Payments to State Agencies and Railroad Retirement Board

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the pay-

ment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

Federal Unemployment Account

(g) There is hereby established in the Unemployment Trust Fund a Federal unemployment account. There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act [29], over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act[29] after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term "unemployment administrative expenditures" means expenditures for grants under title III of this Act, expenditures for the administration of that title by the Social Security Board, the Federal Security Administrator, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act [29], by the Department of the Treasury, the Social Security Board, the Federal Security Administrator, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754) [30], and the sum of $18,451,846 which was authorized to be appropriated by section 11(b) of the Railroad Unemployment Insurance Act [31].

EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT

Establishment of Account

SEC. 905. [42 U.S.C. 1105] (a) There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 904(e), such account shall be maintained as a separate book account.

Transfers to Account

(b)(1) Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

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[29] The Federal Unemployment Tax Act is in §§ 3301-3311 of the Internal Revenue Code of 1954; see Vol. I, p. 737.

[30] See Act of August 24, 1937 (P.L. 75-353), in Vol. II, p. 1275.

[31] See Railroad Unemployment Insurance Act (P.L. 75-722), § 11(b), in Vol. II, p. 1276.

(A) transfers to the employment security administration account pursuant to section 901(b)(2) during such month, exceed

(B) payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred. In the case of any month after March 1977 and before April of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act [32] applies, the first sentence of this paragraph shall be applied by substituting "five-fourteenths" for "one-tenth".[33]

(2) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

(A) $750,000,000, or

(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.[34]

(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the close of any month if he determines that the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

Transfers to State Accounts

(c) Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970 [35].

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[32] The Federal Unemployment Tax Act is in §§ 3301-3311 of the Internal Revenue Code of 1954; see Vol. I, p. 737.

[33] P.L. 94-566, § 211(e)(2), amended this sentence in its entirety, effective October 20, 1976. Formerly, this sentence read as follows: "In the case of any month after March 1973 and before April 1974, the first sentence of this paragraph shall be applied by substituting 'thirteen fifty-eighths' for 'one-tenth'.".

[34] P.L. 94-274, § 101(a), effective April 21, 1976, provides that the term "fiscal year" shall include the period of July 1, 1976, through September 30, 1976. For the conditions to which the exercise of authority pursuant to § 905(b)(2), for that period, shall be subject, see P.L. 94-274, § 101(a), in Vol. II, p. 1659.

[35] See Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373), § 204(e), in Vol. II, p. 1453.

Advances to Extended Unemployment Compensation Account and Repayment

(d) There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970 [35]. Amounts appropriated as repayable advances shall be repaid, without interest, by transfers from the extended unemployment compensation account to the general fund of the Treasury, at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection.

UNEMPLOYMENT COMPENSATION RESEARCH PROGRAM

SEC. 906. [42 U.S.C. 1106] (a) The Secretary of Labor shall—

(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be made public; and

(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.

(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed $8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.

PERSONNEL TRAINING

SEC. 907. [42 U.S.C. 1107] (a) In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—

(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their

qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;

(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.

(b) The Secretary may, to the extent that he finds such action to be necessary, prescribe requirements to assure that any person receiving a fellowship, traineeship, stipend or allowance shall repay the costs thereof to the extent that such person fails to serve in the Federal-State employment security program for the period prescribed by the Secretary. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section.

(c) The Secretary, with the concurrence of the State, may detail Federal employees to State unemployment compensation administration and the Secretary may concur in the detailing of State employees to the United States Department of Labor for temporary periods for training or for purposes of unemployment compensation administration, and the provisions of section 507 of the Elementary and Secondary Education Act of 1965 (79 Stat. 27) [36] or any more general program of interchange enacted by a law amending, supplementing or replacing section 507 shall apply to any such assignment.

(d) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $5,000,000, as may be necessary to carry out the purposes of this section.

FEDERAL ADVISORY COUNCIL

SEC. 908. [42 U.S.C. 1108] (a) The Secretary of Labor shall establish a Federal Advisory Council, of not to exceed 16 members including the chairman, for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations to him for improvement of the system.

(b) The Council shall be appointed by the Secretary without regard to the civil service laws and shall consist of men and women who shall be representatives of employers and employees in equal numbers, and the public.

(c) The Secretary may make available to the Council an Executive Secretary and secretarial, clerical, and other assistance, and

[36] See, instead, 5 U.S.C. 3371-3376, in Vol. II, p. 1120. [P.L. 89-10, 79 Stat. 27, § 507 was classified to 20 U.S.C. 867. P.L. 91-230, § 143(a)(3), redesignated § 507 as § 553; § 553 was classified to 20 U.S.C. 869b. P.L. 91-648, 81 Stat. 1909, § 403, repealed § 553, effective January 5, 1971. P.L. 91-648, § 402, approved January 5, 1971, amended chapter 33 of title 5, U.S.C., to include 5 U.S.C. 3371-3376, "Subchapter VI, Assignments to and from States".]

such pertinent data prepared by the Department of Labor, as it may require to carry out its functions.

(d) Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703(b) [37] for persons in government service employed intermittently.

(e) The Secretary shall encourage the organization of similar State advisory councils.

(f) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $100,000, as may be necessary to carry out the purposes of this section.

FEDERAL EMPLOYEES COMPENSATION ACCOUNT [38]

SEC. 909. [42 U.S.C. 1109] There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5, United States Code. For the purposes provided for in section 904(e), such account shall be maintained as a separate book account.

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[37] As in original. See 5 U.S.C. 5703 in Vol. II, p. 1136; there is no longer a subsection (b) to section 5703 of title 5, U.S. Code.

[38] P.L. 96-499, § 1023(a), added § 909, effective December 5, 1980.

See P.L. 96-499, § 1023(c), with respect to availability of Federal Employees Compensation Account funds for payments, in Vol. II, p. 1744.

[TITLE X—GRANTS TO STATES FOR AID TO THE BLIND][1]

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APPROPRIATION

SECTION 1001. [42 U.S.C. 1201] For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums

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[1] P.L. 92-603, § 303, *repealed* title X, effective January 1, 1974, *except* with respect to Puerto Rico, Guam, and the Virgin Islands.

Title X of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under title X. The Administration for Public Services, Office of Human Development Services, administers social services under title X.

Title X appears in the United States Code as §§ 1201-1206, subchapter X, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title X are contained in subtitle A and chapter XIII, title 45, Code of Federal Regulations.

The Commonwealth of the Northern Marianas may elect to initiate a title X social services program if it chooses; see P.L. 94-241, approved March 24, 1976, in Appendix E, in Vol. II, p. 1016.

See P.L. 82-183, § 618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions, in Vol. II, p. 1528.

See P.L. 87-543, § 141(b), with respect to ineligibility to receive payments under title X where payments have been made under title XVI, in Vol. II, p. 1555.

See P.L. 88-352 (Civil Rights Act of 1964), for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 89-97, § 121(b), with respect to restrictions on payment to a State receiving payments under title XIX, in Vol. II, p. 1435.

See P.L. 90-248 (Social Security Amendments of 1967), § 234(c), regarding nursing homes which do not meet all requirements of the State for licensure, in Vol. II, p. 1444.

See P.L. 90-577, §§ 2-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 93-66, § 213, with respect to recruitment and selection of employees to administer the Federal supplemental security income program, in Vol. II, p. 1472.

See P.L. 93-233, § 11, with respect to continuation of certain demonstration projects for States other than the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, in Vol. II, p. 1614.

See P.L. 93-233, § 19(b), with respect to the transition from State plans to the Federal supplemental security income program, in Vol. II, p. 1617.

See P.L. 93-510, §§ 2-13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

See P.L. 95-291, §§ 1, 2, and 5, with respect to reimbursement of certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

See P.L. 96-223, § 313(c)(1), with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1735.

[2] This table of contents does not appear in the law.

made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the blind.

STATE PLANS FOR AID TO THE BLIND

SEC. 1002. [42 U.S.C. 1202] (a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan[3], and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act or aid to families with dependent children under the State plan approved under section 402 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except

[3] P.L. 91-648, § 208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). See P.L. 91-648, § 208(a)(3)(D), in Vol. II, p. 1598.

that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income;[4] [5] (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;[6] (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be

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[4] See P.L. 79-396 (National School Lunch Act), § 12(e), with respect to exclusion from income and resources of assistance to children under that act, in Vol. II, p. 1526.

See P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing, in Vol. II, p. 1527.

See P.L. 88-525 (Food Stamp Act of 1977), § 8, with respect to exclusion from income and resources of the value of food stamps, in Vol. II, p. 1422.

See P.L. 89-73 (Older Americans Act of 1965), § 709, with respect to the exclusion from income applicable before October 1, 1978, to the cost of a "nutrition project" which supplied at least one hot meal a day to eligible recipients, and § 211(b), with respect to an exclusion applicable to other project costs, in Vol. II, p. 1571.

See P.L. 89-642 (Child Nutrition Act of 1966), § 11(b), with respect to exclusion from income and resources of the value of assistance to children under that act, in Vol. II, p. 1576.

See P.L. 90-575 (Higher Education Amendments of 1968), § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), § 216, with respect to exclusion from income of payments made under that act, in Vol. II, p. 1597.

See P.L. 93-86 (Agriculture and Consumer Protection Act of 1973), § 4(c), with respect to the effect of receipt of Supplemental Security Income benefits (under title XVI of this act) in determining eligibility for food stamps of other members of the household, in Vol. II, p. 1607.

See P.L. 93-112 (Rehabilitation Act of 1973), § 613(c), for the conditional exclusion from income of wages, allowances, transportation reimbursement, and attendant care provided to handicapped individuals under community service employment pilot programs, in Vol. II, p. 1489.

See P.L. 93-113 (Domestic Volunteer Service Act of 1973), § 404(g), with respect to exclusion from income and resources of payments to volunteers under that act, in Vol. II, p. 1610.

See P.L. 93-203 (Comprehensive Employment and Training Act of 1973), § 446, with respect to exclusion from income and resources of earnings and allowances received by a youth under Youth Employment Demonstration Programs in determining eligibility of the youth's family for, and the amount of, benefits, in Vol. II, p. 1612.

See P.L. 94-164 (Revenue Adjustment Act of 1975), § 2(d), with respect to exclusion from income and resources of certain Federal income tax credits/refunds before January 1, 1980, in Vol. II, p. 1654.

See P.L. 95-171, § 10(d), for exclusion from income of certain income related to putting sitters in touch with individuals who wished to employ them, in Vol. II, p. 1679.

See P.L. 95-557 (Housing and Community Development Amendments of 1978), § 410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the Housing Act of 1959 (see P.L. 86-372, § 202, in Vol. II, p. 1543), in Vol. II, p. 1698.

[5] See § 1109 of this Act.

[6] See P.L. 82-183, § 618 (Jenner Amendment), prohibiting denial of grants-in-aid under certain conditions, in Vol. II, p. 1528.

furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (13) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title. In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this title, the Secretary shall approve a plan of such State for aid to the blind for purposes of this title, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this title for an approved plan for aid to the blind; but payments under section 1003 shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1003 under a plan approved under this section without regard to the provisions of this sentence.

PAYMENT TO STATES

SEC. 1003. [42 U.S.C. 1203] (a) From the sums appropriated therefor, the Secretary of the Treasury shall [7] pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of title XVIII for

[7] P.L. 93-647, § 3(e)(2), deleted "(subject to section 1130)", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975.

individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 3⅓7 of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $37 multiplied by the total number of recipients of aid to the blind for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the blind in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the blind in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $75 multiplied by the total number of such recipients of aid to the blind for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the blind for such month; [8] and

(3) in the case of any State whose State plan approved under section 1002 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c)(1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the blind, if such services are requested by such

[8] See § 1108 of this Act.

individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) [9] of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus [10]

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraph (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act [11] (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) under conditions which shall be prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act [11] or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such

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[9] P.L. 93-647, § 5(c), added "(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)", effective (as applicable to Puerto Rico, the Virgin Islands, and Guam) with respect to payments for quarters commencing after September 30, 1975.

[10] See P.L. 93-233, § 12, regarding the effective date of regulations, in Vol. II, p. 1615.

[11] P.L. 93-112, § 500(a), repealed the Vocational Rehabilitation Act, effective December 25, 1973, and deems references to that law to be to the Rehabilitation Act of 1973; see Vol. II, p. 1475.

State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1002 does not meet the requirements of subsection (c)(1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided,* That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to

audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amounts so certified.

(c)(1) In order for a State to qualify for payments under paragraph (3) of subsection (a), its State plan approved under section 1002 must provide that the State agency shall make available to applicants for or recipients of aid to the blind at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (4) of such subsection.

OPERATION OF STATE PLANS

SEC. 1004. [42 U.S.C. 1204] In the case of any State plan for aid to the blind which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

ADMINISTRATION

SEC. 1005. [42 U.S.C. 1205] There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of

$30,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 1006. [42 U.S.C. 1206] For the purposes of this title, the term "aid to the blind" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1002 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need [11A] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i) [12] need not include money payments to an

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[11A] As in original. Should be "needs".

[12] P.L. 92-603, § 409(b), inserted "(i)" and ", and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan", effective October 30, 1972. This amendment has been executed as if it applies to § 1006 as amended by P.L. 92-603, § 408(b) (instead of § 554(b), a number beyond those included in P.L. 92-603).

individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan [12].

TITLE XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW [1]

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[1] Title XI of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare) and by the Department of Labor.

Title XI appears in the United States Code as §§ 1301–1320c–22, subchapter XI, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title XI are contained in chapter III, title 20, in chapters I, II, and IV, title 42, and in Subtitle A and chapters I, III, and XIII, title 45, Code of Federal Regulations. Regulations of the Secretary of Labor relating to title XI are contained in chapter V, title 20 and subtitle A, title 29, Code of Federal Regulations.

See P.L. 88–352 (Civil Rights Act of 1964) for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 90–248 (Social Security Amendments of 1967), § 234(c), with respect to nursing homes which do not meet all requirements of the State for licensure, in Vol. II, p. 1444.

See P.L. 93–510, §§ 2–13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 94–241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

See P.L. 95–224, §§ 2–10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

[2] This table of contents does not appear in the law.

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PART A—GENERAL PROVISIONS

DEFINITIONS [3]

SEC. 1101. [42 U.S.C. 1301] (a) When used in this Act—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in titles [4] IV, V, VII,[4] XI,[4] and XIX includes the Virgin Islands and Guam. Such term when used in titles III, IX, and XII also includes the Virgin Islands.[5] Such term when used in title V and in part B of this title [6] also includes American Samoa and the Trust Territory of the Pacific Islands. In the case of Puerto Rico, the Virgin Islands, and Guam, titles I, X, and XIV, and title XVI (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972 [7]) shall continue to apply, and the term "State" when used in such titles (but not in title XVI as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam.[8]

(2) The term "United States" when used in a geographical sense means, except when otherwise provided, the States.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "Secretary", except when the context otherwise requires, means the Secretary of Health, Education, and Welfare [8A].

(7) The terms "physician" and "medical care" and "hospitalization" includes osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8)(A) The "Federal percentage" for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 percentum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

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[3] See P.L. 94-241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

[4] P.L. 93-233, § 18(z-2)(1)(A)(i), deleted "I,", "X,", "XIV,", and "XVI,", effective on and after January 1, 1974.

[5] P.L. 94-566, § 116(a), added the preceding sentence, effective January 1, 1978. (P.L. 94-566, § 116(f)(1), provided that this provision was effective on the later of (a) October 1, 1976, or (b) the day after the day on which the Secretary of Labor approved under § 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to him by the Virgin Islands for approval. See 43 FR 2957, dated January 20, 1978, for notice that the document was approved on December 31, 1977, and became effective January 1, 1978.)

[6] P.L. 95-142, § 5(1)(2), added "and in part B of this title", effective October 25, 1977.

[7] P.L. 92-603, § 301, added Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled.

[8] P.L. 93-233, § 18(z-2)(1)(A)(ii), added the preceding sentence, effective on and after January 1, 1974.

[8A] The Secretary of Health, Education, and Welfare was redesignated, effective May 4, 1980, as the Secretary of Health and Human Services under section 509 of the Department of Education Organization Act (P.L. 96-88, 93 Stat. 695).

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between October [9] 1 and November 30 [9] of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the eight quarters in the period beginning October [9] 1 next succeeding such promulgation: *Provided,* That the Secretary shall promulgate such percentages as soon as possible after the enactment of the Social Security Amendments of 1958 [10], which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.[11]

(C) The term "United States" means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the "United States". Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(9) The term "shared health facility" means any arrangement whereby—

(A) two or more health care practitioners practice their professions at a common physical location;

(B) such practitioners share (i) common waiting areas, examining rooms, treatment rooms, or other space, (ii) the services of supporting staff, or (iii) equipment;

(C) such practitioners have a person (who may himself be a practitioner)—

(i) who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at such common physical location, other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners;

and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto, on a basis related to amounts charged or collected for

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[9] P.L. 94-273, § 22, deleted "July" and "August 31" and inserted "October" and "November 30", effective April 21, 1976.

[10] August 28, 1958 (P.L. 85-840, 72 Stat. 1013).

[11] P.L. 94-274, § 101(c), effective April 21, 1976, provides that notwithstanding provisions of this paragraph, the Federal percentages promulgated under this paragraph in 1974 shall be conclusive for each of the nine quarters in the period beginning on July 1, 1975, and ending on September 30, 1977.

the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under titles V, XVIII, and XIX in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1861(u) of this Act), a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act [12]), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1954, or any public entity.[13]

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

RULES AND REGULATIONS [14]

SEC. 1102. [42 U.S.C. 1302] The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

SEPARABILITY

SEC. 1103. [42 U.S.C. 1303] If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

RESERVATION OF POWER

SEC. 1104. [42 U.S.C. 1304] The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

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[12] See Public Health Service Act (P.L. 62-265), § 1301(a), in Vol. II, p. 1251.
[13] P.L. 95-142, § 5(c)(2), added paragraph (9), effective October 25, 1977.
[14] See P.L. 94-437, § 702, with respect to regulations applicable to Indians, in Vol. II, p. 1496.

SHORT TITLE

SEC. 1105. [42 U.S.C. 1305] This Act may be cited as the "Social Security Act."

DISCLOSURE OF INFORMATION IN POSSESSION OF DEPARTMENT [15]

SEC. 1106. [42 U.S.C. 1306] (a) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [15A], or under regulations made under authority thereof, which has been transmitted to the Secretary of Health, Education, and Welfare by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Secretary or by any officer or employee of the Department of Health, Education, and Welfare in the course of discharging the duties of the Secretary under this Act, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Secretary or from any officer or employee of the Department of Health, Education, and Welfare, shall be made except as the Secretary may by regulations prescribe and except as provided in part D of title IV of this Act [16]. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.[17]

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary to avoid undue interference with his functions under this Act, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reim-

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[15] 5 U.S.C. 552b(c)(3), effective March 12, 1977, places certain limitations on § 1106.
See Internal Revenue Code of 1954, § 6103(l) with respect to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration, § 7213(a)(1) with respect to the penalty for unauthorized disclosure of that tax return information, and § 7217 with respect to civil damages for unauthorized disclosure of that tax information, in Vol. II, p. 1341.

[15A] Internal Revenue Code of 1939. See Internal Revenue Code of 1954, Subtitles A and C, in Vol. I, p. 688.

[16] P.L. 93-647, § 101(d)(1), inserted "and except as provided in part D of title IV of this Act", effective July 1, 1975.
P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[17] Reorganization Plan No. 2 of 1949 transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which was also transferred to the Department of Labor from the Federal Security Administration). Reorganization Plan No. 19 of 1950 transferred the Bureau of Employees' Compensation from the Federal Security Administration (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section of the Social Security Act also apply to the Secretary of Labor. See Reorganization Plan No. 2 of 1949 and No. 19 of 1950, in Vol. II, p. 1153.

bursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of Health, Education, and Welfare which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of title IV of this Act for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of title IV.[18] [19] [20]

[(c) Stricken.[21]]

(d) Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under title XIX and shall, subject to the limitations contained in subsection (e), make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by titles XVIII and XIX—

(1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(e) No report described in subsection (d) shall be made public by the Secretary or the State title XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known

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[18] P.L. 93-647, § 101(d)(2), added this sentence, effective July 1, 1975.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective date from July 1, 1975, to August 1, 1975.

[19] P.L. 94-432, § 403, requires all Federal agencies to provide the Veterans' Administration with all information it may require for purposes of administering veterans' programs, effective September 30, 1976.

[20] P.L. 94-505, § 201, created the Office of Inspector General within this Department and sets forth duties and responsibilities, including authority over audits and investigations dealing with Departmental programs and operations, effective October 15, 1976. See Vol. II, p. 1663.

[21] P.L. 93-647, § 101(d)(3), struck out subsection (c), effective July 1, 1975. For subsection (c) as it formerly read, see Vol. II, p. 1767.

P.L. 94-46, § 2, effective June 30, 1975, changed that effective deletion date from July 1, 1975, to August 1, 1975.

by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

PENALTY FOR FRAUD

SEC. 1107. [42 U.S.C. 1307] (a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this Act, subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code [22], or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary of Health, Education, and Welfare that he is such individual, or the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

LIMITATION ON PAYMENTS TO PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM [23]

SEC. 1108. [42 U.S.C. 1308] (a) Except as provided in section 2002(a)(2)(C)[24], the total amount [25] certified by the Secretary of Health, Education, and Welfare under title [26] I, X, XIV, and XVI, and under parts A and E [27] of title IV (exclusive of any amounts on account of services and items to which subsection (b) applies)—

(1) for payment to Puerto Rico shall not exceed—

(A) $12,500,000 with respect to the fiscal year 1968,

(B) $15,000,000 with respect to the fiscal year 1969,

(C) $18,000,000 with respect to the fiscal year 1970,

(D) $21,000,000 with respect to the fiscal year 1971,

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[22] See chapters 2, 21, and 23 and §§ 6011(a), 6017, and 6051(a) of the Internal Revenue Code of 1954, in Vol I, p. 688, and Vol. II, p. 1338.

[23] See P.L. 94-274, § 101(a), regarding the period July 1, 1976, through September 30, 1976, and the conditions to which the exercise of authority for that period is subject, in Vol. II, p. 1659.

[24] P.L. 96-272, § 207(c), deleted "section 2002(a)(2)(D)" [sic] and inserted "section 2002(a)(2)(C)", effective June 17, 1980.

[25] P.L. 93-647, § 3(i), deleted "The total amount" and substituted "Except as provided in 2002(a)(2)(D), the total amount", effective with respect to payments under §§ 403 and 603 of the Act for quarters commencing after September 30, 1975, except that the amendments made by P.L. 93-647, § 3(a), to §§ 402-422 of the Act shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

[26] As in original. Should be "titles".

[27] P.L. 96-272, § 305(b), deleted "under part A" and substituted "under parts A and E", effective June 17, 1980.

(E) $24,000,000 with respect to each of the fiscal years 1972 through 1978 [28], or [29]

(F) $72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter [30]; [29]

(2) for payment to the Virgin Islands shall not exceed—

(A) $425,000 with respect to the fiscal year 1968,

(B) $500,000 with respect to the fiscal year 1969,

(C) $600,000 with respect to the fiscal year 1970,

(D) $700,000 with respect to the fiscal year 1971,

(E) $800,000 with respect to each of the fiscal years 1972 through 1978 [28], or [29]

(F) $2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter [30]; [29]

(3) for payment to Guam shall not exceed—

(A) $575,000 with respect to the fiscal year 1968,

(B) $690,000 with respect to the fiscal year 1969,

(C) $825,000 with respect to the fiscal year 1970,

(D) $960,000 with respect to the fiscal year 1971,

(E) $1,100,000 with respect to each of the fiscal years 1972 through 1978 [28], or [31]

(F) $3,300,000 with respect to the fiscal year 1979 and each fiscal year thereafter [30]. [31]

(b) The total amount certified by the Secretary under part A of title IV, on account of family planning services and services provided under section 402(a)(19) with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $2,000,000,

(2) for payment to the Virgin Islands shall not exceed $65,000, and

(3) for payment to Guam shall not exceed $90,000.

(c) The total amount certified by the Secretary under title XIX with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $30,000,000,

(2) for payment to the Virgin Islands shall not exceed $1,000,000, and

(3) for payment to Guam shall not exceed $900,000.[33]

(d) Notwithstanding the provisions of sections 502(a) and 512(a) of this Act, and the provisions of sections 421, 503(1), and 504(1) of this Act as amended by the Social Security Amendments of 1967 [34], and until such time as the Congress may by appropriation or other

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[28] P.L. 96-272, § 305(a)(1), deleted "with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979" and substituted "with respect to each of the fiscal years 1972 through 1978", effective June 17, 1980.

[29] P.L. 95-600, § 802(b), deleted "or" at the end of paragraphs (1)(D) and (2)(D); deleted ";" and "; and" at the end of paragraphs (1)(E) and (2)(E), respectively, and inserted "other than the fiscal year 1979, or" and added subparagraph (1)(F) and (2)(F), effective November 6, 1978.

[30] P.L. 96-272, § 305(a)(2), deleted "with respect to the fiscal year 1979" and substituted "with respect to the fiscal year 1979 and each fiscal year thereafter", effective June 17, 1980.

[31] P.L. 95-600, § 802(b), deleted "or" at the end of paragraph 3(D); deleted "." at the end of paragraph (3)(E); inserted "other than the fiscal year 1979, or" and added subparagraph (F), effective November 6, 1978.

[33] See P.L. 94-241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

[34] P.L. 90-248 (81 Stat. 821), approved January 2, 1968.

law otherwise provide, the Secretary shall, in lieu of the initial allotment specified in such sections, allot such smaller amounts to Guam, American Samoa, and the Trust Territory of the Pacific Islands as he may deem appropriate.

AMOUNTS DISREGARDED NOT TO BE TAKEN INTO ACCOUNT IN DETERMINING ELIGIBILITY OF OTHER INDIVIDUALS

SEC. 1109. [42 U.S.C. 1309] Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under title I, X, XIV, XVI, or XIX, or part A of title IV, shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such titles.

COOPERATIVE RESEARCH OR DEMONSTRATION PROJECTS [35]

SEC. 1110. [42 U.S.C. 1310] (a)(1)[36] There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A)[37] making grants to States and public and other nonprofit organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under the Social Security Act and programs related thereto, and (B)[37] making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(2)[38] No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under paragraph (1)[39], until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed project as to soundness of their [39A] design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(3)[38] Grants and payments under contracts or cooperative arrangements under paragraph (1)[39] may be made either in advance or by way of reimbursement, as may be determined by the Secretary; and shall be made in such installments and on such condi-

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[35] See Public Health Service Act (P.L. 62-265), § 340(e), and (g)(4), with respect to demonstration projects funded under this section for the fiscal year ending September 30, 1978, in Vol. II, p. 1243.

See P.L. 96-265, § 505, with respect to authority for demonstration projects, in Vol. II, p. 1506.

[36] P.L. 96-265, § 505(b)(1), redesignated former subsection (a) as paragraph (1), effective June 9, 1980.

[37] P.L. 96-265, § 505(b)(2), redesignated paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, effective June 9, 1980.

[38] P.L. 96-265, § 505(b)(3), redesignated subsections (b) and (c) as paragraphs (2) and (3), respectively, effective June 9, 1980.

[39] P.L. 96-265, § 505(b)(4), deleted "subsection (a)" and inserted "paragraph (1)", effective June 9, 1980.

[39A] As in original. Should be "its".

tions as the Secretary finds necessary to carry out the purposes of this subsection [40].

(b)(1) The Secretary is authorized to waive any of the requirements, conditions, or limitations of title XVI (or to waive them only for specified purposes, or to impose additional requirements, conditions, or limitations) to such extent and for such period as he finds necessary to carry out one or more experimental, pilot, or demonstration projects which, in his judgment, are likely to assist in promoting the objectives or facilitate the administration of such title. Any costs for benefits under or administration of any such project (including planning for the project and the review and evaluation of the project and its results), in excess of those that would have been incurred without regard to the project, shall be met by the Secretary from amounts available to him for this purpose from appropriations made to carry out such title. The costs of any such project which is carried out in coordination with one or more related projects under other titles of this Act shall be allocated among the appropriations available for such projects and any Trust Funds involved, in a manner determined by the Secretary, taking into consideration the programs (or types of benefit) to which the project (or part of a project) is most closely related or which the project (or part of a project) is intended to benefit. If, in order to carry out a project under this subsection, the Secretary requests a State to make supplementary payments (or makes them himself pursuant to an agreement under section 1616), or to provide medical assistance under its plan approved under title XIX, to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments or provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such payments or assistance from amounts appropriated to carry out title XVI.

(2) With respect to the participation of recipients of supplemental security income benefits in experimental, pilot, or demonstration projects under this subsection—

(A) the Secretary is not authorized to carry out any project that would result in a substantial reduction in any individual's total income and resources as a result of his or her participation in the project;

(B) the Secretary may not require any individual to participate in a project; and he shall assure (i) that the voluntary participation of individuals in any project is obtained through informed written consent which satisfies the requirements for informed consent established by the Secretary for use in any experimental, pilot, or demonstration project in which human subjects are at risk, and (ii) that any individual's voluntary agreement to participate in any project may be revoked by such individual at any time;

(C) the Secretary shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients; and

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[40] P.L. 96-265, § 505(b)(5), deleted "purposes of this section" and inserted "purposes of this subsection", effective June 9, 1980.

(D) the Secretary shall include in the projects carried out under this section such experimental, pilot, or demonstration projects as may be necessary to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of irreversible medical conditions which may result in permanent disability, including programs in residential care treatment centers.[41]

PUBLIC ASSISTANCE PAYMENTS TO LEGAL REPRESENTATIVES

SEC. 1111. [42 U.S.C. 1311] For purposes of titles I, X, XIV, and XVI, and part A of title IV, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

MEDICAL CARE GUIDES AND REPORTS FOR PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE

SEC. 1112. [42 U.S.C. 1312] In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this Act and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

ASSISTANCE FOR UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES

SEC. 1113. [42 U.S.C. 1313] (a)(1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to cover the cost thereof.

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[41] P.L. 96-265, § 505(b)(6), added subsection (b), effective June 9, 1980.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a)(1). Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

(c) For purposes of this section, the term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival, not exceeding ninety days, as may be provided in regulations of the Secretary; except that assistance under this section may be furnished beyond such ninety-day period in the case of any citizen or dependent upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance beyond such period in that particular case [42].

(d) The total amount of temporary assistance provided under this section shall not exceed—

(1) $8,000,000 during the fiscal years ending June 30, 1975, and June 30, 1976, and the succeeding calendar quarter, or

(2) $300,000 during any fiscal year beginning on or after October 1, 1976.[43]

APPOINTMENT OF ADVISORY COUNCIL AND OTHER ADVISORY GROUPS [44]

SEC. 1114. [42 U.S.C. 1314] (a) The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this Act and making recommendations for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for

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[42] P.L. 94-44, § 2, deleted "for such period after their arrival as may be provided in regulations of the Secretary" and substituted "for such period after their arrival, not exceeding ninety days, as may be provided in regulations of the Secretary; except that assistance under this section may be furnished beyond such ninety-day period in the case of any citizen or dependent upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance beyond such period in that particular case", effective June 28, 1975.

[43] P.L. 94-44, § 1, amended subsection (d) in its entirety, effective June 28, 1975. For subsection (d) as it formerly read, see Vol. II, p. 1774.

[44] See P.L. 92-463, approved October 6, 1972, with respect to provisions governing the operations of advisory committees, in Vol. II, p. 1601.

See P.L. 95-216, § 311, with respect to a study of universal coverage, in Vol. II, p. 1497.

See P.L. 95-216, § 341, with respect to a study of proposals to eliminate dependency and sex discrimination under the social security program, in Vol. II, p. 1500.

which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) The Council shall be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

(c) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(d) The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of the Social Security Act) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

(e) The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as prescribed in subsection (d), not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

(f) The Secretary may also appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this Act. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

(g) Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of

title 5, United States Code [45] for persons in Government service employed intermittently.

(h)(1) Any member of the Council or any advisory committee appointed under this Act, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 [46] of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99) [47], except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

DEMONSTRATION PROJECTS [48]

SEC. 1115. [42 U.S.C. 1315] (a) [49] In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title I, VI,[50] X, XIV, XVI, XIX, or XX[51], or part A of title IV, in a State or States—

(1) [49] the Secretary may waive compliance with any of the requirements of section 2, 402, 602,[52] 1002, 1402, 1602, 1902, 2002, 2003, or 2004 [53], as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) [49] costs of such project which would not otherwise be included as expenditures under section 3, 403, 603,[54] 1003, 1403, 1603, 1903, or 2002[55], as the case may be, and which are not included as part of the costs of projects under section 1110,

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[45] See 5 U.S.C. 5703, in Vol. II, p. 1136.

[46] P.L. 87-849, § 2, repealed §§ 281, 283, and 1914; for present text, see 18 U.S.C. 203, 205, and 209, in Vol. II, p. 1161.

[47] P.L. 87-849, § 3, repealed § 190 of the Revised Statutes (5 U.S.C. 99), effective January 21, 1963. For relevant present law, see 18 U.S.C. 207, in Vol. II, p. 1162.

[48] See P.L. 93-233, § 11, regarding Federal financial participation in costs of certain demonstration projects, in Vol. II, p. 1614.

See P.L. 94-274, § 101(a), with respect to "fiscal year" including the period of July 1, 1976, through September 30, 1976, and the conditions to which the exercise of authority for that period is subject, in Vol. II, p. 1659.

[49] P.L. 95-216, § 404(1) added (a) after "Sec. 1115", and § 404(2) redesignated subsections (a) and (b) as (1) and (2), respectively, effective December 20, 1977.

[50] P.L. 93-233, § 18(z-2)(1)(B)(i), inserted "VI,", effective on and after January 1, 1974. As in original; title VI repealed by P.L. 93-647, § 3(b), effective October 1, 1975.

[51] P.L. 93-647, § 3(c)(1), deleted "or XIX" and substituted "XIX, or XX", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975.

[52] P.L. 93-233, § 18(z-2)(1)(B)(ii), inserted "602,", effective on and after January 1, 1974. As in original; section 602 repealed by P.L. 93-647, § 3(b), effective October 1, 1975.

[53] P.L. 93-647, § 3(c)(2), deleted "or 1902" and substituted "1902, 2002, 2003, or 2004". See footnote 51 of this title for effective date.

[54] P.L. 93-233, § 18(z-2)(1)(B)(iii), inserted "603,", effective on and after January 1, 1974. As in original; section 603 repealed by P.L. 93-647, § 3(b), effective October 1, 1975.

[55] P.L. 93-647, § 3(c)(3), deleted "or 1903" and substituted "1903, or 2002". See footnote 51 of this title for effective date.

shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans, or expenditures with respect to which payment shall be made under section 2002,[56] as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such titles for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such titles and is not included as part of the cost of projects for purposes of section 1110.

(b)(1) In order to permit the States to achieve more efficient and effective use of funds for public assistance, to reduce dependency, and to improve the living conditions and increase the incomes of individuals who are recipients of public assistance, any State having an approved plan under part A of title IV may, subject to the provisions of this subsection, establish and conduct not more than three demonstration projects. In establishing and conducting any such project the State shall—

(A) provide that not more than one such project be conducted on a statewide basis;

(B) provide that in making arrangements for public service employment—

(i) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(ii) such project will not result in the displacement of employed workers,

(iii) each participant in such project shall be compensated for work performed by him at an hourly rate equal to the prevailing hourly wage for similar work in the locality where the participant performs such work (and, for purposes of this clause, benefits payable under the State's plan approved under part A of title IV of the family of which such participant is a member shall be regarded as compensation for work performed by such participant),

(iv) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant, and

(v) appropriate workmen's compensation protection is provided to all participants; and

(C) provide that participation in such project by any individual receiving aid to families with dependent children be voluntary.

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[56] P.L. 93-647, § 3(c)(4), inserted "or expenditures with respect to which payment shall be made under section 2002,", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that the amendments made by P.L. 93-647, § 3(a), with respect to §§ 402-422 of the Social Security Act, shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

(2) Any State which establishes and conducts demonstration projects under this subsection may, subject to paragraph (3), with respect to any such project—

(A) waive, subject to paragraph (3), any or all of the requirements of sections 402(a)(1) (relating to statewide operation), 402(a)(3) (relating to administration by a single State agency), 402(a)(8) (relating to disregard of earned income), except that no such waiver of 402(a)(8) shall operate to waive any amount in excess of one-half of the earned income of any individual, and 402(a)(19) (relating to the work incentive program);

(B) subject to paragraph (4), use to cover the costs of the project such funds as are appropriated for payment to such State with respect to the assistance which is or would, except for participation in a project under this subsection, be payable to individuals participating in such projects under part A of title IV for any fiscal year in which such projects are conducted; and

(C) use such funds as are appropriated for payments to States under the State and Local Fiscal Assistance Act of 1972 [57] for any fiscal year in which the project is conducted to cover so much of the costs of salaries for individuals participating in public service employment as is not covered through the use of funds made available under subparagraph (B).

(3)(A) Any State which wishes to establish and conduct demonstration projects under the provisions of this subsection shall submit an application to the Secretary in such form and containing such information as the Secretary may require. Whenever any State submits such an application to the Secretary, it shall at the same time issue public notice of that fact together with a general description of the project with respect to which the application is submitted, and shall invite comment thereon from interested parties and comments thereon may be submitted, within the 30-day period beginning with the date the application is submitted to the Secretary, to the State or the Secretary by such parties. The State shall also make copies of the application available for public inspection. The Secretary shall also immediately publish a summary of the proposed project, make copies of the application available for public inspection, and receive and consider comments submitted with respect to the application. A State shall be authorized to proceed with a project submitted under this subsection—

(i) when such application has been approved by the Secretary (which shall be no earlier than 30 days following the date the application is submitted to him), or

(ii) 60 days after the date on which such application is submitted to the Secretary unless, during such 60 day period, he denies the application.

(B) Notwithstanding the provisions of paragraph (2)(A), the Secretary may review any waiver made by a State under such paragraph. Upon a finding that any such waiver is inconsistent with the purposes of this subsection and the purposes of part A of title IV, the Secretary may disapprove such waiver. The project with

[57] P.L. 92-512 (State and Local Fiscal Assistance Act of 1972), § 106; however, for current provision for allocation among States, see 31 U.S.C. 1225, in Vol. II, p. 1196.

respect to which any such disapproved waiver was made shall be terminated by such State not later than the last day of the month following the month in which such waiver was disapproved.

(4) Any amount payable to a State under section 403(a) on behalf of an individual participating in a project under this section shall not be increased by reason of the participation of such individual in any demonstration project conducted under this subsection over the amount which would be payable if such individual were receiving aid to families with dependent children and not participating in such project.

(5) Participation in a project established under this section shall not be considered to constitute employment for purposes of any finding with respect to "unemployment" as that term is used in section 407.

(6) Any demonstration project established and conducted pursuant to the provisions of this subsection shall be conducted for not longer than two years. All demonstration projects established and conducted pursuant to the provisions of this subsection shall be terminated not later than September 30, 1980.[58]

ADMINISTRATIVE AND JUDICIAL REVIEW OF CERTAIN ADMINISTRATIVE DETERMINATIONS

SEC. 1116. [42 U.S.C. 1316] (a)(1) Whenever a State plan is submitted to the Secretary by a State for approval under title I, VI,[59] X, XIV, XVI, XIX or XX[60], or part A of title IV, he shall not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such title. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such title. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final deter-

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[58] P.L. 95-216, § 404(3), added subsection (b), effective December 20, 1977.

[59] P.L. 93-233, § 18(z-2)(1)(C)(i), inserted "VI,", effective on and after January 1, 1974. As in original; title VI repealed by P.L. 93-647, § 3(b), effective October 1, 1975.

[60] P.L. 93-647, § 3(d)(1), deleted "or XIX" and substituted "XIX or XX", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that the amendments made by P.L. 93-647, § 3(a), to §§ 402-422 of the Social Security Act, shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands or Guam.

mination of the Secretary under section 4, 404, 604,[61] 1004, 1404, 1604, 1904, or 2003 [62] may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28, United States Code [63].

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code [64].

(b) For the purposes of subsection (a), any amendment of a State plan approved under title I, VI,[65] X, XIV, XVI, XIX or XX[66], or part A of title IV, may, at the option of the State, be treated as the submission of a new State plan.

(c) Action pursuant to an initial determination of the Secretary described in subsection (a) shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under title I, VI,[67] X, XIV, XVI, or [67A] XIX, XX,[68] or part A of title IV, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

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[61] P.L. 93-233, § 18(z-2)(1)(C)(ii), inserted "604,", effective on and after January 1, 1974. As in original; section 604 repealed by P.L. 93-647, § 3(b), effective October 1, 1975.

[62] P.L. 93-647, § 3(d)(2), deleted "or 1904" and substituted "1904, or 2003", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that the amendments made by P.L. 93-647, §§ 402-422 of the Social Security Act, shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands or Guam.

[63] See 28 U.S.C. 2112, in Vol. II, p. 1178.

[64] See 28 U.S.C. 1254, in Vol. II, p. 1176.

[65] P.L. 93-233, § 18(z-2)(1)(C)(iii), inserted "VI,", effective on and after January 1, 1974. As in original; title VI repealed by P.L. 93-647, § 3(b), effective October 1, 1975.

[66] P.L. 93-647, § 3(d)(1), deleted "or XIX" and substituted "XIX or XX", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that the amendments made by P.L. 93-647, § 3(a), to §§ 402-422 of the Social Security Act shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands or Guam.

[67] P.L. 93-233, § 18(z-2)(1)(C)(iv), inserted "VI,", effective on and after January 1, 1974. As in original; title VI repealed by P.L. 93-647, § 3(b), effective October 1, 1975.

[67A] As in original. Should have "or" after "XIX,".

[68] P.L. 93-647, § 3(d)(3), inserted "XX,". See footnote 66 of this title for effective date.

[SEC. 1117. Repealed.[69]]

ALTERNATIVE FEDERAL PAYMENT WITH RESPECT TO PUBLIC ASSISTANCE EXPENDITURES

SEC. 1118. [42 U.S.C. 1318] In the case of any State which has in effect a plan approved under title XIX for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September[70] 30),[71] under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1905), instead of the percentages provided under each such section, to the expenditures under its State plans approved under titles I, X, XIV, and XVI, and part A of title IV, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of the preceding sentence, the term "Federal medical assistance percentage" shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum [72, 73]

FEDERAL PARTICIPATION IN PAYMENTS FOR REPAIRS TO HOME OWNED BY RECIPIENT OF AID OR ASSISTANCE

SEC. 1119. [42 U.S.C. 1319] In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under title I, X, XIV, or XVI, or part A of title IV if—

(1) the State agency or local agency administering the plan approved under such title has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 3(a), 403(a), 1003(a), 1403(a), or 1603(a) shall be increased by 50 per

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[69] P.L. 90-248, § 221(d), effective July 1, 1968.

[70] P.L. 94-273, § 2, deleted "June" and substituted "September", effective April 21, 1976.

[71] P.L. 94-274, § 204(7), effective April 21, 1976, provides that the period July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975.

[72] P.L. 96-272, § 305(c), deleted "when applied to quarters in the fiscal year ending September 30, 1979", effective June 17, 1980.

[73] P.L. 95-600, § 802(a), added "For purposes of the preceding sentence, the term 'Federal medical assistance percentage' shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum when applied to quarters in the fiscal year ending September 30, 1979.", effective November 6, 1978.

centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.

APPROVAL OF CERTAIN PROJECTS

SEC. 1120. [42 U.S.C. 1320] (a) No payment shall be made under this Act with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this Act (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of Health, Education, and Welfare.

(b) The Secretary shall submit an annual report to Congress setting forth a description of each project approved under subsection (a) during the year preceding such report, including a statement of the purpose, probable cost, and expected duration of each such project.[74]

UNIFORM REPORTING SYSTEMS FOR HEALTH SERVICES FACILITIES AND ORGANIZATIONS [75]

SEC. 1121. [42 U.S.C. 1320a] (a) For the purposes of reporting the cost of services provided by, of planning, and of measuring and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this Act, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

(1) The aggregate cost of operation and the aggregate volume of services.

(2) The costs and volume of services for various functional accounts and subaccounts.

(3) Rates, by category of patient and class of purchaser.

(4) Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.

(5) Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the application of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 306(e)(1) of the Public Health Service Act[76]. In reporting under such a system, hospitals shall employ such chart of accounts,

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[74] P.L. 93-608, § 2(5), amended subsection (b) in its entirety, effective January 2, 1975. For subsection (b) as it formerly read, see Vol. II, p. 1762.

[75] P.L. 95-142, § 19(a), added § 1121. For effective date, see P.L. 95-142, § 19(c)(1), in Vol. II, p. 1677.

[76] See Public Health Service Act (P.L. 62-265), § 306(e), in Vol. II, p. 1228.

definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) The Secretary shall—

(1) monitor the operation of the systems established under subsection (a);

(2) assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and

(3) periodically revise such systems to improve their effectiveness and diminish their cost.

(c) The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) in a useful manner and format to appropriate agencies and organizations, including health systems agencies (designated under section 1515 of the Public Health Service Act[77]) and State health planning and development agencies (designated under section 1521 of such Act), as may be necessary to carry out such agencies' and organizations' functions.

LIMITATION ON FEDERAL PARTICIPATION FOR CAPITAL EXPENDITURES

SEC. 1122. [42 U.S.C. 1320a-1] (a) The purpose of this section is to assure that Federal funds appropriated under titles V, XVIII, and XIX are not used to support unnecessary capital expenditures made by or on behalf of health care facilities[78] which are reimbursed under any of such titles and that, to the extent possible, reimbursement under such titles shall support planning activities with respect to health services and facilities in the various States.

(b) The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility[79] in such State within the field of its responsibilities,

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B), and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care

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[77] See Public Health Service Act (P.L. 62-265), § 1515, in Vol. II, p. 1258.

[78] P.L. 95-559, § 14(b)(2), deleted "or health maintenance organizations", effective November 1, 1978.

[79] P.L. 95-559, § 14(b)(1), as amended, deleted "or health maintenance organization", effective November 1, 1978.

P.L. 96-32, § 2(c), amended P.L. 95-559, § 14(b)(1), by deleting "organizations" and substituting "organization", effective July 10, 1979.

facilities [80] in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings, whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [81] (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [82]) to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) The Secretary shall pay any such State from the Federal Hospital Insurance Trust Fund, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b).

(d)(1) Except as provided in paragraph (2), if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or

(B)(i) the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had, within a reasonable period after receiving such notice and prior to obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the standards, criteria, or plans developed by such agency or any other agency described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b)—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act [83] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or

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[80] P.L. 95-559, § 14(b)(2), deleted "or health maintenance organizations", effective November 1, 1978.

[81] P.L. 62-265, approved August 14, 1912; see Vol. II, p. 1225.

[82] P.L. 88-164, approved October 31, 1963; see Vol. II, p. 1368.

[83] See P.L. 62-265, §§ 314(a) and (b) and 604(a), in Vol. II, p. 1229.

other local area plan or plans referred to in section 314(b) of the Public Health Service Act [83] and covering the area in which the health care facility [84] proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under titles V, XVIII, and XIX with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate [85] basis, in determining the Federal payments to be made under titles V, XVIII, and XIX, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate [85] basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i), determines that an exclusion of expenses related to any capital expenditure of any health care facility [84] would discourage the operation or expansion of such facility [86] which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of title V, XVIII, or XIX, he shall not exclude [87] such expenses pursuant to paragraph (1).

(e) Where a person obtains under lease or comparable arrangement any facility or part thereof, or equipment for a facility, which would have been subject to an exclusion under subsection (d) if the person had acquired it by purchase, the Secretary shall (1) in computing such person's rental expense in determining the Federal payments to be made under titles V, XVIII, and XIX with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would

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[84] P.L. 95-559, § 14(b)(1), as amended, deleted "or health maintenance organization", effective November 1, 1978.

P.L. 96-32, § 2(c), amended P.L. 95-559, § 14(b)(1), by deleting "organizations" and substituting "organization", effective July 10, 1979.

[85] P.L. 93-233, § 18(z), added "or a fixed fee or negotiated rate", effective on and after January 1, 1974.

[86] P.L. 95-559, § 14(b)(3), deleted "or organization, or of any facility of such organization,", effective November 1, 1978.

[87] P.L. 93-233, § 18(z-1), deleted "include" and substituted "exclude", effective on and after January 1, 1974.

have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's return on equity capital deduct any amount deposited under the terms of the lease or comparable arrangement.

(f) Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) For the purposes of this section, a "capital expenditure" is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $100,000, (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds $100,000.

(h) The provisions of this section shall not apply to Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(i)(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this Act or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS–

18 in section 5332 of title 5, United States Code [88], including travel-time, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of such title 5 [89] for persons in the Government service employed intermittently.

PROGRAM FOR DETERMINING QUALIFICATIONS FOR CERTAIN HEALTH CARE PERSONNEL

SEC. 1123. [42 U.S.C. 1320a-2] (a) The Secretary, in carrying out his functions relating to the qualifications for health care personnel under title XVIII, shall develop (in consultation with appropriate professional health organizations and State health and licensure agencies) and conduct (in conjunction with State health and licensure agencies) until December 31, 1981 [90], a program designed to determine the proficiency of individuals (who do not otherwise meet the formal educational, professional membership, or other specific criteria established for determining the qualifications of practical nurses, therapists, laboratory technicians, and technologists, and cytotechnologists, X-ray technicians, psychiatric technicians, or other health care technicians and technologists) to perform the duties and functions of practical nurses, therapists, laboratory technicians, technologists, and cytotechnologists, X-ray technicians, psychiatric technicians, or other health care technicians and technologists. Such program shall include (but not be limited to) the employment of procedures for the formal testing of the proficiency of individuals. In the conduct of such program, no individual who otherwise meets the proficiency requirements for any health care specialty shall be denied a satisfactory proficiency rating solely because of his failure to meet formal educational or professional membership requirements.

(b) If any individual has been determined, under the program established pursuant to subsection (a), to be qualified to perform the duties and functions of any health care specialty, no person or provider utilizing the services of such individual to perform such duties and functions shall be denied payment, under title XVIII or under any State plan approved under title XIX, for any health care services provided by such person on the grounds that such individual is not qualified to perform such duties and functions.

DISCLOSURE OF OWNERSHIP AND RELATED INFORMATION [91]

SEC. 1124. [42 U.S.C. 1320a-3] (a) (1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

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[88] See 5 U.S.C. 5332, in Vol. II, p. 1133.

[89] See 5 U.S.C. 5703, in Vol. II, p. 1136. As in original; there is no longer a subsection (b) to section 5703 of title 5, U.S. Code.

[90] P.L. 96-499, § 911, deleted "1977" and substituted "1981", effective December 5, 1980.

[91] P.L. 95-142, § 3(a)(1), added § 1124, effective with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Act pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed on and after October 25, 1977.

See Public Health Service Act (P.L. 62-265), § 1318, in Vol. II, p. 1257.

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by titles V, XVIII, XIX, and XX, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under titles V, XVIII, XIX, and XX,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest.

(2) As used in this section, the term "disclosing entity" means an entity which is—

(A) a provider of services (as defined in section 1861(u), other than a fund), an independent clinical laboratory, a renal disease facility, or a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act [92]);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to title V or under a State plan approved under title XIX;

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of title XVIII, or both, or for purposes of a State plan approved under title XIX) pursuant to (i) an agreement under section 1816, (ii) a contract under section 1842, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under title XIX; or

(D) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a State plan or program approved under title XX.

(3) As used in this section, the term "person with an ownership or control interest" means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity; or [93]

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

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[92] See Public Health Service Act (P.L. 62-265), § 1301(a), in Vol. II, p. 1251.

[93] P.L. 96-499, § 912(a), amended clause (ii) in its entirety, effective December 5, 1980. For clause (ii) as it formerly read, see Vol. II, p. 1835.

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1), with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

ISSUANCE OF SUBPENAS BY COMPTROLLER GENERAL [94]

SEC. 1125. [42 U.S.C. 1320a-4] (a) For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this Act, the Comptroller General of the United States shall have power to sign and issue subpenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) In case of contumacy by, or refusal to obey a subpena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the General Accounting Office or by counsel whom he may employ without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title [95], relating to classification and General Schedule pay rates.

(c) No personal medical record in the possession of the General Accounting Office shall be subject to subpena or discovery proceedings in a civil action.

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[94] P.L. 95-142, § 6, added § 1125, effective October 25, 1977.
[95] See title 5, United States Code, chapters 51 and 53, in Vol. II, p. 1124.

DISCLOSURE BY INSTITUTIONS, ORGANIZATIONS, AND AGENCIES OF OWNERS AND CERTAIN OTHER INDIVIDUALS WHO HAVE BEEN CONVICTED OF CERTAIN OFFENSES [96]

SEC. 1126. [42 U.S.C. 1320a-5] (a) As a condition of participation in or certification or recertification under the programs established by titles XVIII, XIX, and XX, any hospital, nursing facility, or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b)) of such institution, organization, or agency, and

(2) has been convicted (on or after the date of the enactment of this section [97], or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.

The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health, Education, and Welfare of the receipt from any institution, organization, or agency of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term "managing employee" means, with respect to an institution, organization, or agency, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the institution, organization, or agency, or who directly or indirectly conducts the day-to-day operations of the institution, organization, or agency.

ADJUSTMENT OF RETROACTIVE BENEFITS UNDER TITLE II ON ACCOUNT OF SUPPLEMENTAL SECURITY INCOME BENEFITS [98]

SEC. 1127. [42 U.S.C. 1320a-6] Notwithstanding any other provision of this Act, in any case where an individual—

(1) makes application for benefits under title II and is subsequently determined to be entitled to those benefits, and

(2) was an individual with respect to whom supplemental security income benefits were paid under title XVI (including State supplementary payments which were made under an agreement pursuant to section 1616(a) or an administration agreement under section 212 of Public Law 93-66 [99]) for one or more months during the period beginning with the first month for which a benefit described in paragraph (1) is payable and

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[96] P.L. 95-142, § 8(a), added § 1126, effective with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after February 1, 1978.

[97] October 25, 1977 (P.L. 95-142; 91 Stat. 1175).

[98] P.L. 96-265, § 501(a), added § 1127, effective with respect to payments of monthly insurance benefits under title II of the Act entitlement for which is determined on or after July 1, 1981.

[99] See P.L. 93-66, § 212, in Vol. II, p. 1470.

ending with the month before the first month in which such benefit is paid pursuant to the application referred to in paragraph (1),

the benefits (described in paragraph (1)) which are otherwise retroactively payable to such individual for months in the period described in paragraph (2) shall be reduced by an amount equal to so much of such supplemental security income benefits (including State supplementary payments) described in paragraph (2) for such month or months as would not have been paid with respect to such individual or his eligible spouse if the individual had received the benefits under title II at the times they were regularly due during such period rather than retroactively; and from the amount of such reduction the Secretary shall reimburse the State on behalf of which such supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the period involved exceeded the expenditures which the State would have made (for such period) if the individual had received the benefits under title II at the times they were regularly due during such period rather than retroactively. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

EXCLUSION OF CERTAIN INDIVIDUALS CONVICTED OF MEDICARE- OR MEDICAID-RELATED CRIMES [100]

SEC. 1128. [42 U.S.C. 1320a-7] (a) Whenever the Secretary determines that a physician or other individual has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to such individual's participation in the delivery of medical care or services under title XVIII, XIX, or XX, the Secretary—

(1) shall bar from participation in the program under title XVIII, for such period as he may deem appropriate, each such individual otherwise eligible to participate in such program;

(2)(A) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under title XIX or title XX, of the fact and circumstances of such determination, and (except as provided in subparagraph (B)) require each such agency to bar such individual from participation in such plan for such period as he shall specify, which in the case of an individual specified in paragraph (1) shall be the period established pursuant to paragraph (1);

(B) may waive the requirement under subparagraph (A) to bar an individual from participation in a State plan under title XIX or title XX, where he receives and approves a request for such a waiver with respect to that individual from the State agency administering or supervising the administration of such plan; and

(3) shall promptly notify the appropriate State or local agency or authority having responsibility for the licensing or

[100] P.L. 96-499, § 913(a), added § 1128, effective December 5, 1980.

certification of such individual of the fact and circumstances of such determination, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to such request.

(b) A determination made by the Secretary under this section shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, post-hospital extended care services, and home health services furnished under title XVIII, such determination shall be effective in the manner provided in paragraphs (3) and (4) of section 1866(b) with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(c) Any person who is the subject of an adverse determination made by the Secretary under subsection (a) shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

COORDINATED AUDITS [101]

SEC. 1129. [42 U.S.C. 1320a-8] (a) If an entity provides services reimbursable on a cost-related basis under title V or XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title V or XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordinated audits between the program established under title V or XIX and the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title V or XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be in excess of the amount that would have been apportioned to the State under the title (for the expenses of the Sate [101A] incurred in the common audit) if it had participated in the common audit.

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[101] P.L. 96-499, § 914(a), added § 1129, effective December 5, 1980.

See P.L. 96-499, § 914(d), with respect to Secretary's report to Congress on certain audits and inspections, in Vol. II, p. 1738.

[101A] As in original. Should be "State".

(b)(1) In the case of entities which have audits coordinated under subsection (a), the Secretary shall establish one or more projects to demonstrate the feasibility of creating a single coordinated appeal hearing to adjudicate those administrative cost items which are determined under such a coordinated audit and which such entities dispute and appeal.

(2) In the case of a demonstration project under this subsection, the Secretary may waive such requirements of title V, XVIII, or XIX as would prevent carrying out the project or would require duplicative activity or otherwise create unnecessary administrative burdens in carrying out the project.

(3) The Secretary shall report to Congress not later than December 31, 1982, with respect to demonstration projects conducted under this subsection, including the reaction of the entities involved and estimates of any savings effected through reduction of duplication of appeal hearings, and shall include in such report recommendations for such legislation as the Secretary deems appropriate to insure the maximum feasible coordination of such appeal hearings.

(4) The Secretary shall also provide for the review of the feasibility of establishing a single coordinated process for the collection of overpayments established in a coordinated audit under subsection (a). The Secretary shall report to Congress not later than December 31, 1981, on such review and on such recommendations for changes in legislation as the Secretary deems appropriate.

[SEC. 1130. Repealed.[102]]

NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS[103]

SEC. 1131. [42 U.S.C. 1320b-1] (a) Whenever—

(1) the Secretary makes a finding of fact and a decision as to—

(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228,

(B) the entitlement of any individual to a lump-sum death payment payable under section 202(i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or

(2) the Secretary is requested to do so—

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[102] P.L. 93-647, § 3(e)(1), repealed § 1130, effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975, except that the amendments made by P.L. 93-647, § 3, to §§ 402-422 of the Social Security Act shall not be applicable with respect to the Commonwealth of Puerto Rico, the Virgin Islands or Guam. For § 1130 as it formerly read, see Vol. II, p. 1768.

See P.L. 95-291, §§ 1(b) and 2(b)(2), with respect to reimbursement for certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

[103] P.L. 93-406, § 1032, added § 1131, effective January 1, 1978.

See Internal Revenue Code of 1954, § 6103(l) relating to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration, § 7213(a)(1) relating to the penalty for unauthorized disclosure of that tax return information, and § 7217 regarding civil damages for unauthorized disclosure of that tax information, in Vol. II, p. 1341.

(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204(d) of this Act.[103A]

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

(b)(1) For purposes of section 201(g)(1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II.

(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a).

PERIOD WITHIN WHICH CERTAIN CLAIMS MUST BE FILED[104]

SEC. 1132. [42 U.S.C. 1320b–2] (a) Notwithstanding any other provision of this Act (but subject to subsection (b)), any claim by a State for payment with respect to an expenditure made during any calendar quarter by the State—

(1) in carrying out a State plan approved under title I, IV, V, X, XIV, XVI, XIX, or XX of this Act, or

(2) under any other provision of this Act which provides (on an entitlement basis) for Federal financial participation in expenditures made under State plans or programs,

shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this Act on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs.

(b) The Secretary shall waive the requirement imposed under subsection (a) with respect to the filing of any claim if he determines (in accordance with regulations) that there was good cause for the failure by the State to file such claim within the period prescribed under subsection (a). Any such waiver shall be only for such additional period of time as may be necessary to provide the

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[103A] As in original. Period should be a comma.

[104] P.L. 96-272, § 306(a), added § 1132, effective only in the case of claims filed on account of expenditures made in calendar quarters commencing on or after October 1, 1979.

See P.L. 96-272, § 306(b)(2), (3), and (4), and (c), with respect to certain claims filed under § 1132, in Vol. II, p. 1509.

State with a reasonable opportunity to file such claim. A failure to file a claim within such time period which is attributable to neglect or administrative inadequacies shall be deemed not to be for good cause.

APPLICANTS OR RECIPIENTS UNDER PUBLIC ASSISTANCE PROGRAMS NOT TO BE REQUIRED TO MAKE ELECTION RESPECTING CERTAIN VETERANS' BENEFITS [105]

SEC. 1133. [42 U.S.C. 1320b–3] (a) Notwithstanding any other provision of law (but subject to subsection (b)), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV, or of benefits under the Supplemental Security Income program established by title XVI shall—

(1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [106] with respect to pension paid by the Veterans' Administration, or

(2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) The provisions of subsection (a) shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a), during a period with respect to which there is in effect—

(1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a), in the State having such plan, or

(2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by title XVI, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under title XIX, under which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a).

NONPROFIT HOSPITAL PHILANTHROPY [107]

SEC. 1134. [42 U.S.C. 1320b–4] For purposes of determining, under titles V, XVIII, and XIX of this Act, the reasonable costs of services provided by nonprofit hospitals, the following items shall not be deducted from the operating costs of such hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

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[105] P.L. 96–272, § 310(a)(1), added § 1133, effective on and after January 1, 1979; except that nothing in § 1133 shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in § 1133(a) for any benefit period which begins prior to June 17, 1980.

See P.L. 96–272, § 310(b), with respect to certain requirements for the sending of a written notice, in Vol. II, p. 1510.

[106] See P.L. 95–588, § 306, in Vol. II, p. 1503.

[107] P.L. 96–499, § 901(a), added § 1134, effective with respect to grants, gifts, and endowments, and income therefrom, made or established after December 5, 1980.

(2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated [107A] grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the scale [107B] or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.

PART B—PROFESSIONAL STANDARDS REVIEW

DECLARATION OF PURPOSE [108]

SEC. 1151. [42 U.S.C. 1320c] In order to promote the effective, efficient, and economical delivery of health care services of proper quality for which payment may be made (in whole or in part) under this Act and in recognition of the interests of patients, the public, practitioners, and providers in improved health care services, it is the purpose of this part to assure, through the application of suitable procedures of professional standards review, that the services for which payment may be made under the Social Security Act will conform to appropriate professional standards for the provision of health care and that payment for such services will be made—

(1) only when, and to the extent, medically necessary, as determined in the exercise of reasonable limits of professional discretion; and

(2) in the case of services provided by a hospital or other health care facility on an inpatient basis, only when and for such period as such services cannot, consistent with professionally recognized health care standards, effectively be provided on an outpatient basis or more economically in an inpatient health care facility of a different type, as determined in the exercise of reasonable limits of professional discretion.

DESIGNATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 1152. [42 U.S.C. 1320c-1] (a) The Secretary shall (1) not later than January 1, 1974, establish throughout the United States appropriate areas with respect to which Professional Standards Review Organizations may be designated, and (2) at the earliest practicable date after designation of an area enter into an agreement with a qualified organization whereby such an organization

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[107A] As in original. Should be "donor-designated".

[107B] As in original. Should be "sale".

[108] See P.L. 96-499, § 929, with respect to study of professional standards review organizations norms, standards, and criteria, in Vol. II, p. 1739.

shall be conditionally designated as the Professional Standards Review Organization for such area. If, on the basis of its performance during such period of conditional designation, the Secretary determines that such organization is capable of fulfilling, in a satisfactory manner, the obligations and requirements for a Professional Standards Review Organization under this part, he shall enter into an agreement with such organization designating it as the Professional Standards Review Organization for such area.

(b) For purposes of subsection (a), the term "qualified organization" means—

(1) when used in connection with any area—

(A) an organization (i) which is a nonprofit professional association (or a component organization thereof), (ii) which is composed of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area, and, if the organization so elects, of other health care practitioners engaged in the practice of their professions in such area who hold independent hospital admitting privileges,[109] (iii) the membership of which includes a substantial proportion of all such physicians in such area, (iv) which is organized in a manner which makes available professional competence to review health care services of the types and kinds with respect to which Professional Standards Review Organizations have review responsibilities under this part, (v) the membership of which is voluntary and open to all doctors of medicine or osteopathy licensed to engage in the practice of medicine or surgery in such area without requirement of membership in or payment of dues to any organized medical society or association, and (vi) which does not (except as otherwise provided under section 1155(c))[110] restrict the eligibility of any member for service as an officer of the Professional Standards Review Organization or eligibility for and assignment to duties of such Professional Standards Review Organization, or, subject to subsection (c)(1)[111],

(B) such other public, nonprofit private, or other agency or organization, which the Secretary determines, in accordance with criteria prescribed by him in regulations, to be of professional competence and otherwise suitable; and

(2) an organization which the Secretary, on the basis of his examination and evaluation of a formal plan which shall be developed and submitted by the association, agency, or organization in accordance with subsection (h)[112] (as well as on the basis of other relevant data and information), finds to be willing to perform and capable of performing, in an effective, timely, and objective manner and at reasonable cost, the

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[109] P.L. 96–499, § 921(1), added "and, if the organization so elects, of other health care practitioners engaged in the practice of their professions in such area who hold independent hospital admitting privileges,", effective December 5, 1980.

[110] P.L. 96–499, § 921(2), added "(except as otherwise provided under section 1155(c))", effective December 5, 1980.

[111] P.L. 95–142, § 5(o)(1), deleted "(i)" and substituted "(1)", effective October 25, 1977.

[112] P.L. 95–142, § 5(d)(2), deleted "submitted to him by the association, agency, or organization" and substituted "which shall be developed and submitted by the association, agency, or organization in accordance with subsection (h)", effective October 25, 1977.

duties, functions, and activities of a Professional Standards Review Organization required by or pursuant to this part.

(c)(1) The Secretary shall not enter into any agreement under this part under which there is designated as the Professional Standards Review Organization for any area any organization other than an organization referred to in subsection (b)(1)(A) prior to January 1, 1978[113], nor after such date, unless, in such area, there is no organization referred to in subsection (b)(1)(A) which meets the conditions specified in subsection (b)(2).

(2) Whenever the Secretary shall have entered into an agreement under this part under which there is designated as the Professional Standards Review Organization for any area any organization other than an organization referred to in subsection (b)(1)(A), he shall not renew such agreements with such organization if he determines that—

(A) there is in such area an organization referred to in subsection (b)(1)(A) which (i) has not been previously designated as a Professional Standards Review Organization, and (ii) is willing to enter into an agreement under this part under which such organization would be designated as the Professional Standards Review Organization for such area;

(B) such organization meets the conditions specified in subsection (b)(2); and

(C) the designation of such organization as the Professional Standards Review Organization for such area is anticipated to result in substantial improvement in the performance in such area of the duties and functions required of such organizations under this part.

(d) Any such agreement under this part with an organization (other than an agreement established pursuant to section 1154) shall be for a term of 12 months; except that, prior to the expiration of such term such agreement may be terminated—

(1) by the organization at such time and upon such notice to the Secretary as may be prescribed in regulations (except that notice of more than 3 months may not be required); or

(2) by the Secretary at such time and upon such reasonable notice to the organization as may be prescribed in regulations, but only after the Secretary has determined (after providing such organization with an opportunity for a formal hearing on the matter) that such organization is not substantially complying with or effectively carrying out the provisions of such agreement.

(e) Where the Secretary finds a Professional Standards Review Organization (whether designated on a conditional basis or otherwise) to be competent to perform review responsibilities, the review, certification, and similar activities otherwise required pur-

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[113] P.L. 94-182, § 108(a), effective December 31, 1975, deleted "1976" and substituted "1978". The amendment is not applicable in any area designated in accordance with § 1152(a)(1) of the Social Security Act where—

(1) the membership association or organization representing the largest number of doctors of medicine in such area, or in the State in which such area is located if different, has adopted by resolution or other official procedure a formal policy position of opposition to or noncooperation with the established program of professional standards review; or

(2) the organization proposed to be designated by the Secretary under § 1152 of such Act has been negatively voted upon in accordance with the provisions of subsection (f)(2) thereof.

suant to provisions of this Act (other than this part) shall not be applicable with respect to those providers, suppliers, and practitioners being reviewed by such Professional Standards Review Organization, except to the extent specified by the Secretary. Nothing in the preceding sentence shall be construed as rendering inapplicable any provision of this Act wherein requirements with respect to conditions for eligibility to or payment of benefits (as distinct from reviews and certifications made with respect to determinations of the kind made pursuant to paragraphs (1) and (2) of section 1155(a)) must be satisfied.[114]

(f)(1) In the case of agreements entered into prior to January 1, 1978[115], under this part under which any organization is designated as the Professional Standards Review Organization for any area, the Secretary shall, prior to entering into any such agreement with any organization for any area, inform (under regulations of the Secretary) the doctors of medicine or osteopathy who are in active practice in such area of the Secretary's intention to enter into such an agreement with such organization.

(2) If, within a reasonable period of time following the serving of such notice, more than 10 per centum of such doctors object to the Secretary's entering into such an agreement with such organization on the ground that such organization is not representative of doctors in such area, the Secretary shall conduct a poll of such doctors to determine whether or not such organization is representative of such doctors in such area. If more than 50 per centum of the doctors responding to such poll indicate that such organization is not representative of such doctors in such area the Secretary shall not enter into such an agreement with such organization.

(g)(1) In any case in which the Secretary has established, within a State, two or more appropriate areas with respect to which Professional Standards Review Organizations may be designated, he shall, prior to designating a Professional Standards Review Organization for any such area, conduct in each such area a poll in which the doctors of medicine and doctors of osteopathy engaged in active practice therein will be asked: "Do you support a change from the present local and regional Professional Standards Review Organization area designations to a single statewide area designation?". If, in each such area, more than 50 per centum of the doctors responding to such question respond in the affirmative, then the Secretary shall establish the entire State as a single Professional Standards Review Organization area.

(2) The provisions of paragraph (1) shall not be applicable with respect to the designation of Professional Standards Review Organization areas in any State, if, prior to the date of enactment of this subsection[116], the Secretary has entered into an agreement (on a conditional basis or otherwise) with an organization designating

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[114] P.L. 95-142, § 5(a), effective October 25, 1977, amended subsection (e) in its entirety. For subsection (e) as it formerly read, see Vol. II, p. 1790.

[115] P.L. 94-182, § 108(a), effective December 31, 1975, deleted "1976" and substituted "1978". See footnote 113 of this title for applicability.

[116] December 31, 1975 (P.L. 94-182, 89 Stat. 1052).

it as the Professional Standards Review Organization for any area in the State.[117]

(h)(1) During the development and preparation by an organization of its formal plan under subsection (b)(2) or of any modification of such plan to include review of services in skilled nursing facilities (as defined in section 1861(j)) or intermediate care facilities (as defined in section 1905(c)) or review of ambulatory care services, the organization shall consult with the single State agency responsible for administering or supervising the administration of the State plan approved under title XIX for the State in which the organization is located.

(2) Such plan and any such modification shall be submitted to the Governor of such State, at the time of its submission to the Secretary, for his comments.

(3) The Secretary, before making the findings described in subsection (b)(2) or a finding regarding the organization's capability to perform review of such services (as the case may be), shall consider any such comments submitted to him by such Governor before the end of the thirty-day period beginning on the date of submission of the plan or of any such modification (as the case may be).

(4) If, after considering such comments, the Secretary intends to make findings which are adverse to such comments, the Secretary shall provide the Governor making such comments with the opportunity to submit additional evidence and comments on such intended findings during a period of not less than thirty days ending before the findings became effective.[118]

REVIEW PENDING DESIGNATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATION

SEC. 1153. [42 U.S.C. 1320c-2] Pending the assumption by a Professional Standards Review Organization for any area, of full review responsibility, and pending a demonstration of capacity for improved review effort with respect to matters involving the provision of health care services in such area for which payment (in whole or in part) may be made, under this Act, any review with respect to such services which has not been designated by the Secretary as the full responsibility of such organization, shall be reviewed in the manner otherwise provided for under law.

TRIAL PERIOD FOR PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 1154. [42 U.S.C. 1320c-3] (a) The Secretary shall initially designate an organization as a Professional Standards Review Organization for any area on a conditional basis with a view to determining the capacity of such organization to perform the duties and functions imposed under this part on Professional Standards Review Organizations. Such designation may not be made prior to receipt from such organization and approval by the Secretary of a formal plan for the orderly assumption and implementation of the responsibilities of the Professional Standards Review Organization under this part.

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[117] P.L. 94-182, § 105, added subsection (g), effective December 31, 1975.
[118] P.L. 95-142, § 5(d)(2)(B), added subsection (h), effective October 25, 1977.

(b) During any such trial period (which may not exceed 48 months except as provided in subsection (c))[119], the Secretary may require a Professional Standards Review Organization to perform, in addition to review of health care services (other than ancillary, ambulatory care, and long-term care services) provided by or in hospitals and to review of alcohol detoxification facility services, only such of the duties and functions as he requires the organization to perform under subsection (f)(2) or subsection (f)(4) and which the organization is[120] [121] capable of performing. The number and type of such duties shall, during the trial period, be progressively increased as the organization becomes capable of added responsibility so that, by the end of such period, such organization shall be considered a qualified organization only if the Secretary finds that it is substantially carrying out in a satisfactory manner the activities and functions required of that Professional Standards Review Organization under this part[122] [123]. Any of such duties and functions not performed by such organization during such period shall be performed in the manner and to the extent otherwise provided for under law.

(c) If the Secretary finds that an organization designated under subsection (a) has been unable to perform satisfactorily all of the duties and functions required under this part of that organization[124] for reasons beyond the organization's control, he may extend such organization's trial period for an additional period not exceeding twenty-four months.[125]

(d)[125] Any agreement under which any organization is conditionally designated as the Professional Standards Review Organization for any area may be terminated by such organization upon 90 days notice to the Secretary or by the Secretary upon 90 days notice to such organization.

(e) In determining whether an organization designated on a conditional basis as the Professional Standards Review Organization for any area is substantially carrying out its duties in a satisfactory manner and should be considered a qualified organization, the Secretary shall follow the procedures specified in section 1152(h)

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[119] P.L. 95–142, § 5(b)(1), deleted "(which may not exceed 24 months)" and substituted "(which may not exceed 48 months except as provided in subsection (c))", effective October 25, 1977.

[120] P.L. 96–499, § 924(a)(1)(A), deleted "provided by or in institutions,[121] only such of the duties and functions required under this part of Professional Standards Review Organization as he determines such organization to be" and substituted "(other than ancillary, ambulatory care, and long-term care services) provided by or in hospitals and to review of alcohol detoxification facility services, only such of the duties and functions as he requires the organization to perform under subsection (f)(2) or subsection (f)(4) and which the organization is", effective December 5, 1980.

[121] P.L. 95–142, § 5(b)(1)(B), inserted ", in addition to review of health care services provided by or in institutions,", effective October 25, 1977.

[122] P.L. 96–499, § 924(a)(1)(B), deleted ", the activities and functions required of Professional Standards Review Organizations under this part with respect to the review of health care services provided by or in institutions (including ancillary services) and, in addition, review of such other health care services as the Secretary may require"[123] and substituted "the activities and functions required of that Professional Standards Review Organization under this part", effective December 5, 1980.

[123] P.L. 95–142, § 5(b)(1)(C), deleted "or ordered by physicians and other practitioners and institutional and other health care facilities, agencies, and organizations" and substituted "by or in institutions (including ancillary services) and, in addition, review of such other health care services as the Secretary may require", effective October 25, 1977.

[124] P.L. 96–499, § 924(a)(2), added "of that organization", effective December 5, 1980.

[125] P.L. 95–142, § 5(b)(2), inserted a new subsection (c) and redesignated the former subsection (c) as (d), effective October 25, 1977.

(concerning the Secretary's consideration of comments of the Governor of the State in which the organization is located).[126]

(f)(1) The Secretary shall establish a program (hereinafter in this subsection referred to as the "program") for the evaluation of the cost-effectiveness of review of particular health care services by Professional Standards Review Organizations.

(2) In order to demonstrate the cost-effectiveness of requiring review of particular health care services before such review is generally required, the program shall be designed in a manner so that the Secretary will require particular Professional Standards Review Organizations, chosen by a statistically valid method that will permit a valid evaluation of the cost-effectiveness of such review, to review particular health care services.

(3) The program shall provide for the evaluation of cost-effectiveness of the review of particular health care services under the program, particularly in comparison with areas in which such review was not required or performed.

(4) Based upon such evaluation, or upon an evaluation of comparable statistical validity, and a finding that review of particular health care services is cost-effective or yields other significant benefits, the Secretary shall specify such particular health care services which Professional Standards Review Organizations (either generally or under such conditions and circumstances as the Secretary may specify) have the duty and function of reviewing under this part.

(5) For purposes of this subsection, the term "particular health care services" does not include health care services (other than ancillary, ambulatory care, and long-term care services) provided by or in hospitals or alcohol detoxification facility services.[127]

DUTIES AND FUNCTIONS OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 1155. [42 U.S.C. 1320c-4] (a)(1) Notwithstanding any other provision of law, but consistent with the provisions of this part, it shall [128] be the duty and function of each Professional Standards Review Organization for any area to assume, to the extent and at the time specified by the Secretary under section 1154(f)[129], responsibility for the review of the professional activities in such area of physicians and other health care practitioners and institutional and noninstitutional providers of health care services (except as provided in paragraph (7))[130] in the provision of health care services and items for which payment may be made (in whole or in part) under this Act for the purpose of determining whether—

(A) such services and items are or were medically necessary;

(B) the quality of such services meets professionally recognized standards of health care; and

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[126] P.L. 95-142, § 5(d)(2)(C), added subsection (e), effective October 25, 1977.

[127] P.L. 96-499, § 924(a)(3), added subsection (f), effective December 5, 1980.

[128] P.L. 95-142, § 5(o)(2), deleted "(subject to the provisions of subsection (g))", effective October 25, 1977.

[129] P.L. 96-499, § 924(b)(1), deleted "at the earliest date practicable" and substituted "to the extent and at the time specified by the Secretary under section 1154(f)", effective December 5, 1980.

[130] P.L. 95-142, § 5(d)(3)(B)(i), inserted "(except as provided in paragraph (7))", effective October 25, 1977.

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type.

(2) Each Professional Standards Review Organization shall have the authority to determine, in advance, in the case of—

(A) any elective admission to a hospital or other health care facility (including admissions occurring on weekends), and

(B) any routine diagnostic services furnished in connection with such an admission,

whether such service, if provided, or if provided by a particular health care practitioner or by a particular hospital or other health care facility, organization, or agency, would meet the criteria specified in subparagraphs (A) and (C) of paragraph (1). Each such Organization may be directed by the Secretary to excercise [130A] such authority where the Secretary finds (consistent with section 1154(f)) that such determinations can be made on a timely basis by the Organization and appropriate procedures will be applied to assure prompt notification of such determinations to providers, physicians, practitioners, and persons on whose behalf payment may be made under this Act for services and items.[131]

(3) Each Professional Standards Review Organization shall, in accordance with regulations of the Secretary, determine and publish, from time to time, the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order most effectively to carry out the purposes of this part, exercise the authority conferred upon it under paragraph (2).

(4) Each Professional Standards Review Organization shall be responsible for the arranging for the maintenance of and the regular review of profiles of care and services received and provided with respect to patients, utilizing to the greatest extent practicable in such patient profiles, methods of coding which will provide maximum confidentiality as to patient identity and assure objective evaluation consistent with the purposes of this part. Profiles shall also be regularly reviewed on an ongoing basis with respect to each health care practitioner and provider to determine whether the care and services ordered or rendered are consistent with the criteria specified in clauses (A), (B), and (C) of paragraph (1).

(5) Physicians assigned responsibility for the review of hospital care may be only those having active hospital staff privileges in at least one of the participating hospitals in the area served by the Professional Standards Review Organization[132].

(6) No physician shall be permitted to review—

[130A] As in original. Should be "exercise".

[131] P.L. 96-499, § 926, amended paragraph (2) in its entirety, effective December 5, 1980. For paragraph (2) as it formerly read, see Vol. II, p. 1835.

[132] P.L. 95-142, § 5(p), deleted "and (except as may be otherwise provided under subsection (e)(1) of this section) such physicians ordinarily should not be responsible for, but may participate in the review of care and services provided in any hospital in which such physicians have active staff privileges", effective October 25, 1977.

(A) health care services provided to a patient if he was directly responsible for [133] providing such services, or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant [134] financial interest in such institution, organization, or agency.

For purposes of this paragraph, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(7)(A) Except as provided in subparagraph (B), a Professional Standards Review Organization located in a State has the function and duty to assume responsibility for the review under paragraph (1) of professional activities in intermediate care facilities (as defined in section 1905(c)) and in public institutions for the mentally retarded (described in section 1905(d)(1)) only, consistent with section 1154(f),[135] if (i) the Secretary finds, on the basis of such documentation as he may require from the State, that the single State agency which administers or supervises the administration of the State plan approved under title XIX for that State is not performing effective review of the quality and necessity of health care services provided in such facilities and institutions, or (ii) the State requests such organization to assume such responsibility.

(B) A Professional Standards Review Organization located in a State has the function and duty to assume responsibility for the review under paragraph (1) of professional activities in intermediate care facilities in the State that are also skilled nursing facilities (as defined in section 1861(j)), to the extent (consistent with section 1154(f)) [136] that the Secretary finds that the performance of such function by the single State agency (described in subparagraph (A)) for that State is inefficient.[137]

(8) Each Professional Standards Review Organization shall consult (with such frequency and in such manner as may be prescribed by the Secretary) with representatives of health care practitioners (other than physicians described in section 1861(r)(1)) and of institutional and noninstitutional providers of health care services, in relation to the Professional Standards Review Organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.[138]

(b) To the extent necessary or appropriate for the proper performance of its duties and functions, the Professional Standards Review Organization serving any area is authorized in accordance with regulations prescribed by the Secretary to—

(1) make arrangements to utilize the services of persons who are practitioners of or specialists in the various areas of medi-

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[133] P.L. 95-142, § 5(c)(1)(A), deleted "or indirectly involved in" and substituted "responsible for", effective October 25, 1977.

[134] P.L. 95-142, § 5(c)(1)(B), deleted "any" and substituted "a significant", effective October 25, 1977.

[135] P.L. 96-499, § 924(b)(2), inserted ", consistent with section 1154(f),", effective December 5, 1980.

[136] P.L. 96-499, § 924(b)(3), inserted "(consistent with section 1154(f))", effective December 5, 1980.

[137] P.L. 95-142, § 5(d)(3)(B)(ii), added paragraph (7), effective October 25, 1977.

[138] P.L. 96-499, § 927(a), added paragraph (8), effective June 3, 1981.

cine (including dentistry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization;

(2) undertake such professional inquiry either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review under subsection (a)(1);

(3) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under subsection (a)(1); and

(4) inspect the facilities in which care is rendered or services provided (which are located in such area) of any practitioner or provider.

(c) No Professional Standards Review Organization shall utilize the services of any individual who is not a duly licensed doctor of medicine or osteopathy to make final determinations in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine or osteopathy, or any act performed by any duly licensed doctor of medicine or osteopathy in the exercise of his profession.

(d) In order to familiarize physicians with the review functions and activities of Professional Standards Review Organizations and to promote acceptance of such functions and activities by physicians, patients, and other persons, each Professional Standards Review Organization, in carrying out its review responsibilities, shall (to the maximum extent consistent with the effective and timely performance of its duties and functions)—

(1) encourage all physicians practicing their profession in the area served by such Organization to participate as reviewers in the review activities of such Organizations;

(2) provide rotating physician membership of review committees on an extensive and continuing basis;

(3) assure that membership on review committees have the broadest representation feasible in terms of the various types of practice in which physicians engage in the area served by such Organization; and

(4) utilize, whenever appropriate, medical periodicals and similar publications to publicize the functions and activities of Professional Standards Review Organizations.

(e)(1) Each Professional Standards Review Organization shall utilize the services of, and accept the findings of, the review committees of a hospital (including any skilled nursing facility, as defined in section 1861(j), or intermediate care facility, as defined in section 1905(c), which is also a part of such hospital) or other operating health care facility or organization (other than such a skilled nursing facility or intermediate care facility which is not part of a hospital)[139] located in the area served by such organization, but

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[139] P.L. 95-142, § 5(d)(3)(A), deleted "or other operating health care facility or organization" and substituted "(including any skilled nursing facility, as defined in section 1861(j), or intermediate care facility, as defined in section 1905(c), which is also a part of such hospital) or other operating health care facility or organization (other than such a skilled nursing facility or intermediate care facility which is not a part of a hospital)", effective October 25, 1977.

only when and only to the extent and only for such time that such committees in such hospital or other operating health care facility or organization have demonstrated to the satisfaction of such organization their capacity effectively, efficiently,[140] and in timely fashion to review activities in such hospital or other operating health care facility or organization (including the medical necessity of admissions, types and extent of services ordered, and lengths of stay) so as to aid in accomplishing the purposes and responsibilities described in subsection (a)(1), except where the Secretary disapproves, for good cause, such acceptance.

(2) The Secretary may prescribe regulations to carry out the provisions of this subsection.

(f)(1) An agreement entered into under this part between the Secretary and any organization under which such organization is designated as the Professional Standards Review Organization for any area shall provide that such organization will—

(A) perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part, and

(B) collect such data relevant to its functions and such information and keep and maintain such records in such form as the Secretary may require to carry out the purposes of this part and to permit access to and use of any such records as the Secretary may require for such purposes.

(2) Any such agreement with an organization under this part shall provide that the Secretary make payments to such organization equal to the amount of expenses reasonably and necessarily incurred, as determined by the Secretary, by such organization in carrying out or preparing to carry out the duties and functions required by such agreement.

(3) Any such agreement with an organization under this part may be in the form of a grant or an assistance agreement.[141]

[(g) Repealed.[142]]

(h) If the Secretary has designated an organization (other than under section 1154) as a Professional Standards Review Organization, but that organization has not assumed responsibility for the review of particular activities in its area included in subsection (a)(1), the Secretary may designate another qualified Professional Standards Review Organization (in reasonable proximity to the providers and practitioners whose services are to be reviewed) to assume the responsibility for the review of some or all of those particular activities.[143]

(i) Any Professional Standards Review Organization which has assumed responsibility under this section for review of inpatient hospital services in an area shall also assume responsibility in such area for review of detoxification facility services.[144]

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[140] P.L. 96–499, § 925, added ", efficiently,", effective December 5, 1980.
[141] P.L. 95–142, § 5(c)(1)(C), added paragraph (3), effective October 25, 1977.
[142] P.L. 96–499, § 924(c), repealed subsection (g), effective December 5, 1980. For subsection (g) as it formerly read, see Vol. II, p. 1835.
[143] P.L. 96–499, § 924(d), added subsection (h), effective December 5, 1980.
[144] P.L. 96–499, § 931(g), added subsection (i), effective December 5, 1980.

NORMS OF HEALTH CARE SERVICES FOR VARIOUS ILLNESSES OR HEALTH CONDITIONS

SEC. 1156. [42 U.S.C. 1320c-5] (a) Each Professional Standards Review Organization shall apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice in its regions (including typical lengths-of-stay for institutional care by age and diagnosis) as principal points of evaluation and review. The National Professional Standards Review Council and the Secretary shall provide such technical assistance to the organization as will be helpful in utilizing and applying such norms of care, diagnosis, and treatment. Where the actual norms of care, diagnosis, and treatment in a Professional Standards Review Organization area are significantly different from professionally developed regional norms of care, diagnosis, and treatment approved for comparable conditions, the Professional Standards Review Organization concerned shall be so informed, and in the event that appropriate consultation and discussion indicate reasonable basis for usage of other norms in the area concerned, the Professional Standards Review Organization may apply such norms in such area as are approved by the National Professional Standards Review Council.

(b) Such norms with respect to treatment for particular illnesses or health conditions shall include (in accordance with regulations of the Secretary)—

(1) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care;

(2) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

(c)(1) The National Professional Standards Review Council shall provide for the preparation and distribution, to each Professional Standards Review Organization and to each other agency or person performing review functions with respect to the provision of health care services under this Act, of appropriate materials indicating the regional norms to be utilized pursuant to this part. Such data concerning norms shall be reviewed and revised from time to time. The approval of the National Professional Standards Review Council of norms of care, diagnosis, and treatment shall be based on its analysis of appropriate and adequate data.

(2) Each review organization, agency, or person referred to in paragraph (1) shall utilize the norms developed under this section as a principal point of evaluation and review for determining, with respect to any health care services which have been or are proposed to be provided, whether such care and services are consistent with the criteria specified in section 1155(a)(1).

(d)(1) Each Professional Standards Review Organization shall—

(A) in accordance with regulations of the Secretary, specify the appropriate points in time after the admission of a patient for inpatient care in a health care institution, at which the

physician attending such patient shall execute a certification stating that further inpatient care in such institution will be medically necessary effectively to meet the health care needs of such patient; and

(B) require that there be included in any such certification with respect to any patient such information as may be necessary to enable such organization properly to evaluate the medical necessity of the further institutional health care recommended by the physician executing such certification.

(2) The points in time at which any such certification will be required (usually, not later than the 50th percentile of lengths-of-stay for patients in similar age groups with similar diagnosis) shall be consistent with and based on professionally developed norms of care and treatment and data developed with respect to length of stay in health care institutions of patients having various illnesses, injuries, or health conditions, and requiring various types of health care services or procedures.

SUBMISSION OF REPORTS BY PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 1157. [42 U.S.C. 1320c–6] If, in discharging its duties and functions under this part, any Professional Standards Review Organization determines that any health care practitioner or any hospital, or other health care facility, agency, or organization has violated any of the obligations imposed by section 1160, such organization shall report the matter to the Statewide Professional Standards Review Council for the State in which such organization is located together with the recommendations of such Organization as to the action which should be taken with respect to the matter. Any Statewide Professional Standards Review Council receiving any such report and recommendation shall review the same and promptly transmit such report and recommendation to the Secretary together with any additional comments or recommendations thereon as it deems appropriate.[145]

REQUIREMENT OF REVIEW APPROVAL AS CONDITION OF PAYMENT OF CLAIMS

SEC. 1158. [42 U.S.C. 1320c–7] (a) Except as provided for in subsections (d) and (e) of this section and in sections 1159, 1861(v)(1)(G), and 1902(h)[146], no Federal funds appropriated under any title of this Act (other than title V) for the provision of health care services or items shall be used (directly or indirectly) for the payment, under such title or any program established pursuant thereto, of any claim for the provision of such services or items, unless the Secretary, pursuant to regulation determines that the claimant is without fault if—

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[145] P.L. 95–142, § 13(b)(4), deleted "The Secretary may utilize a Professional Standards Review Organization, in lieu of a program review team as specified in sections 1862 and 1866, for purposes of subparagraph (C) of section 1862(d)(1) and subparagraph (F) of section 1866(b)(2).", effective October 25, 1977.

[146] P.L. 95–142, § 22(a)(1), added "and subsection (d)", effective October 25, 1977.

P.L. 96–499, § 931(h), deleted "section 1159 and subsection (d)" and substituted "subsections (d) and (e) of this section and in sections 1159, 1861(v)(1)(G), and 1902(h)", effective December 5, 1980.

(1) the provision of such services or items is subject to review under this part by any Professional Standards Review Organization, or other agency; and

(2) such organization or other agency has, in the proper exercise of its duties and functions under or consistent with the purposes of this part, disapproved of the services or items giving rise to such claim, and has notified the practitioner or provider who provided or proposed to provide such services or items and the individual who would receive or was proposed to receive such services or items of its disapproval of the provision of such services or items.

(b) Whenever any Professional Standards Review Organization, in the discharge of its duties and functions as specified by or pursuant to this part, disapproves of any health care services or items furnished or to be furnished by any practitioner or provider, such organization shall, after notifying the practitioner, provider, or other organization or agency of its disapproval in accordance with subsection (a), promptly notify the agency or organization having responsibility for acting upon claims for payment for or on account of such services or items.

(c) Where a Professional Standards Review Organization (whether designated on a conditional basis or otherwise) has been found competent by the Secretary to assume review responsibility with respect to specified types of health care services or specified providers or practitioners of such services and is performing such reviews, determinations made pursuant to paragraphs (1) and (2) of section 1155(a) in connection with such reviews shall constitute the conclusive determination on those issues (subject to sections 1159, 1171(a)(1), and 1171(d)(3)) for purposes of payment under this Act, and no reviews with respect to those determinations shall be conducted, for purposes of payment, by agencies and organizations which are parties to agreements entered into by the Secretary pursuant to section 1816, carriers which are parties to contracts entered into by the Secretary pursuant to section 1842, or single State agencies administering or supervising the administration of State plans approved under title XIX.[147]

(d) In any case in which a Professional Standards Review Organization disapproves (under subsection (a)) of inpatient hospital services or posthospital extended care services, payment may be made for such services furnished before the second day after the day on which the provider received notice of such disapproval, or, if such organization determines that more time is required in order to arrange postdischarge care, payment may be made for such services furnished before the fourth day after the day on which the provider received notice of such disapproval. In the case of disapproval of inpatient hospital services where payment for inpatient services is continued under section 1861(v)(1)(G) or section 1902(h), the previous sentence shall not apply with respect to such disapproval.[148]

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[147] P.L. 95-142, § 5(d)(1), added subsection (c), effective October 25, 1977.

[148] P.L. 95-142, § 22(a)(2), added subsection (d), effective October 25, 1977. P.L. 96-499, § 902(a)(3), added the preceding sentence, effective on the date of which final regulations, promulgated by the Secretary to implement this amendment, are first issued; and those regulations shall be issued not later than June 1, 1981.

(e) Subsection (a) of this section shall not apply to a determination by a Professional Standards Review Organization under section 1155(a)(1)(C) that detoxification services provided or proposed to be provided in a hospital on an inpatient basis could be more economically provided in a detoxification facility.[149]

HEARINGS AND REVIEW BY SECRETARY

SEC. 1159. [42 U.S.C. 1320c–8] (a) Any beneficiary or recipient who is entitled to benefits under this Act (other than title V) or a provider or practitioner who is dissatisfied with a determination with respect to a claim made by a Professional Standards Review Organization in carrying out its responsibilities for the review of professional activities in accordance with paragraphs (1) and (2) of section 1155(a) shall, after being notified of such determination, be entitled to a reconsideration thereof by the Professional Standards Review Organization and, where the Professional Standards Review Organization reaffirms such determination in a State which has established a Statewide Professional Standards Review Council, and where the matter in controversy is $100 or more, such determination shall be reviewed by professional members of such Council and, if the Council so determined, revised.

(b) Where the determination of the Statewide Professional Standards Review Council is adverse to the beneficiary or recipient (or, in the absence of such Council in a State and where the matter in controversy is $100 or more), such beneficiary or recipient shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and, where the amount in controversy is $1,000 or more, to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). The Secretary will render a decision only after appropriate professional consultation on the matter.

(c) Any review or appeals provided under this section shall be in lieu of any review, hearing, or appeal under this Act with respect to the same issue.

OBLIGATIONS OF HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES; SANCTIONS AND PENALTIES; HEARINGS AND REVIEW

SEC. 1160. [42 U.S.C. 1320c–9] (a)(1) It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under this Act, to assure that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under this Act—

(A) will be provided only when, and to the extent, medically necessary; and

(B) will be of a quality which meets professionally recognized standards of health care; and

(C) will be supported by evidence of such medical necessity and quality in such form and fashion and at such time as may

[149] P.L. 96–499, § 931(h)(2), added subsection (e), effective December 5, 1980.

reasonably be required by the Professional Standards Review Organization in the exercise of its duties and responsibilities;

and it shall be the obligation of any health care practitioner in ordering, authorizing, directing, or arranging for the provision by any other person (including a hospital or other health care facility, organization, or agency), of health care services for any patient of such practitioner, to exercise his professional responsibility with a view to assuring (to the extent of his influence or control over such patient, such person, or the provision of such services) that such services or items will be provided—

(D) only when, and to the extent, medically necessary; and

(E) will be of a quality which meets professionally recognized standards of health care.

(2) Each health care practitioner, and each hospital or other provider of health care services, shall have an obligation, within reasonable limits of professional discretion, not to take any action, in the exercise of his profession (in the case of any health care practitioner), or in the conduct of its business (in the case of any hospital or other such provider), which would authorize any individual to be admitted as an inpatient in or to continue as an inpatient in any hospital or other health care facility unless—

(A) inpatient care is determined by such practitioner and by such hospital or other provider, consistent with professionally recognized health care standards, to be medically necessary for the proper care of such individual; and

(B)(i) the inpatient care required by such individual cannot, consistent with such standards, be provided more economically in a health care facility of a different type; or

(ii) (in the case of a patient who requires care which can, consistent with such standards, be provided more economically in a health care facility of a different type) there is, in the area in which such individual is located, no such facility or no such facility which is available to provide care to such individual at the time when care is needed by him.

(b)(1) If after reasonable notice and opportunity for discussion with the health care practitioner or hospital, or other health care facility, agency, or organization [150] concerned, any Professional Standards Review Organization submits a report and recommendations to the Secretary pursuant to section 1157 (which report and recommendations shall be submitted through the Statewide Professional Standards Review Council, if such Council has been established, which shall promptly transmit such report and recommendations together with any additional comments and recommendations thereon as it deems appropriate) and if the Secretary determines that such health care practitioner or hospital, or other health care facility, agency, or organization[150], in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this Act has—

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[150] P.L. 95-142, § 5(e), deleted "practitioner or provider" and substituted "health care practitioner or hospital, or other health care facility, agency, or organization", effective October 25, 1977.

(A) by failing, in a substantial number of cases, substantially to comply with any obligation imposed on him under subsection (a), or

(B) by grossly and flagrantly violating any such obligation in one or more instances,

demonstrated an unwillingness or a lack of ability substantially to comply with such obligations, he (in addition to any other sanction provided under law) may exclude (permanently or [151] for such period as the Secretary may prescribe) such health care practitioner or hospital, or other health care facility, agency, or organization[150] from eligibility to provide such services on a reimbursable basis.

(2) A determination made by the Secretary under this subsection shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in title XVIII with respect to terminations of provider agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or provider to provide such health care services on a reimbursable basis) such practitioner or provider pay to the United States, in case such acts or conduct involved the provision or ordering by such practitioner or provider of health care services which were medically improper or unnecessary, an amount not in excess of the actual or estimated cost of the medically improper or unnecessary services so provided, or (if less) $5,000. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the person from whom such amount is claimed.

(4) Any person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(c) It shall be the duty of each Professional Standards Review Organization and each Statewide Professional Standards Review Council to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or provider (referred to in subsection (a)) providing health care services in such

[151] P.L. 95-142, § 5(o)(3), added "or", effective October 25, 1977.

area shall comply with all obligations imposed on him under subsection (a).

NOTICE TO PRACTITIONER OR PROVIDER

SEC. 1161. [42 U.S.C. 1320c-10] Whenever any Professional Standards Review Organization takes any action or makes any determination—

(a) which denies any request, by a health care practitioner or other provider of health care services, for approval of a health care service or item proposed to be ordered or provided by such practitioner or provider; or

(b) that any such practitioner or provider has violated any obligation imposed on such practitioner or provider under section 1160,

such organization shall, immediately after taking such action or making such determination, give notice to such practitioner or provider of such determination and the basis therefor, and shall provide him with appropriate opportunity for discussion and review of the matter.

STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCILS; ADVISORY GROUPS TO SUCH COUNCILS

SEC. 1162. [42 U.S.C. 1320c-11] (a) In any State in which there are located three or more Professional Standards Review Organizations, the Secretary shall establish a Statewide Professional Standards Review Council.

(b) The membership of any such Council for any State shall be appointed by the Secretary and shall consist of—

(1) one representative from and designated by each Professional Standards Review Organization in the State;

(2) four physicians, two of whom may be designated by the State medical society and two of whom may be designated by the State hospital association of such State to serve as members on such Council; and

(3) four persons knowledgeable in health care from such State whom the Secretary shall have selected as representatives of the public in such State (at least two of whom shall have been recommended for membership on the Council by the Governor of such State).

(c) It shall be the duty and function of the Statewide Professional Standards Review Council for any State, in accordance with regulations of the Secretary, (1) to coordinate the activities of, and disseminate information and data among the various Professional Standards Review Organizations within such State including assisting the Secretary in development of uniform data gathering procedures and operating procedures applicable to the several areas in a State (including, where appropriate, common data processing operations serving several or all areas) to assure efficient operation and objective evaluation of comparative performance of the several areas and, (2) to assist the Secretary in evaluating the performance of each Professional Standards Review Organization, and (3) where the Secretary finds it necessary to replace a Professional Standards Review Organization, to assist him in developing and arranging for

a qualified replacement Professional Standards Review Organization.

(d) The Secretary is authorized to enter into an agreement with any such Council under which the Secretary shall make payments to such Council equal to the amount of expenses reasonably and necessarily incurred, as determined by the Secretary, by such Council in carrying out the duties and functions provided in this section.

(e)(1) The Statewide Professional Standards Review Council for any State[152] shall be advised and assisted in carrying out its functions by an advisory group (of not less than seven nor more than eleven members) which shall be made up of representatives (including at least one registered professional nurse and at least one doctor of dental surgery or of dental medicine)[153] of health care practitioners (other than physicians) and hospitals and other health care facilities which provide within the State health care services for which payment (in whole or in part) may be made under any program established by or pursuant to this Act.

(2) The Secretary shall by regulations provide the manner in which members of such advisory group shall be selected by the Statewide Professional Standards Review Council[154].

(3) The expenses reasonably and necessarily incurred, as determined by the Secretary, by such group in carrying out it[154A] duties and functions under this subsection shall be considered to be expenses necessarily incurred by the Statewide Professional Standards Review Council served by such group.

NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

SEC. 1163. [42 U.S.C. 1320c–12] (a)(1) There shall be established a National Professional Standards Review Council (hereinafter in this section referred to as the "Council") which shall consist of eleven physicians, one doctor of dental surgery or of dental medicine, one registered professional nurse, and one other health practitioner (other than a physician as defined in section 1861(r)(1)),[155] not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(2) Members of the Council shall be appointed for a term of three years, except that the Secretary may provide, in the case of any terms scheduled to expire after January 1, 1978, for such shorter terms as will ensure that (on a continuing basis) the terms of no more than five[156] members expire in any year. Members of the Council shall be eligible for reappointment.[157]

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[152] P.L. 96–499, § 927(b), deleted "(or in a State which does not have such Council, the Professional Standards Review Organizations in such State which have agreements with the Secretary)", effective June 3, 1981.

[153] P.L. 96–499, § 922(a), inserted "(including at least one registered professional nurse and at least one doctor of dental surgery or of dental medicine)", effective June 3, 1981.

[154] P.L. 96–499, § 927(b), deleted "(or Professional Standards Review Organizations in States without such Councils)", effective June 3, 1981.

[154A] As in original. Should be "its".

[155] P.L. 96–499, § 923(a), inserted "one doctor of dental surgery or of dental medicine, one registered professional nurse, and one other health practitioner (other than a physician as defined in section 1861(r)(1)),", effective June 3, 1981.

[156] P.L. 96–499, § 923(b), deleted "four" and substituted "five", effective June 3, 1981.

[157] P.L. 95–142, § 5(f), amended paragraph (2) in its entirety, effective October 25, 1977. For paragraph (2) as it formerly read, see Vol. II, p. 1790.

(3) The Secretary shall from time to time designate one of the physician [158] members of the Council to serve as Chairman thereof.

(b) Physician members [158A] of the Council shall consist of physicians of recognized standing and distinction in the appraisal of medical practice. A majority of such members shall be physicians who have been recommended by [158B] the Secretary to serve on the Council by national organizations recognized by the Secretary as representing practicing physicians. The membership of the Council shall include physicians who have been recommended for membership on the Council by consumer groups and other health care interests.

(c) The Council is authorized to utilize, and the Secretary shall make available, or arrange for, such technical and professional consultative assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical and other assistance and such pertinent data prepared by, for, or otherwise available to, the Department of Health, Education, and Welfare as the Council may require to carry out its functions.

(d) Members of the Council, while serving on business of the Council, shall be entitled to receive compensation at a rate fixed by the Secretary (but not in excess of the daily rate paid under GS–18 of the General Schedule under section 5332 of title 5, United States Code [159]), including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code [160], for persons in Government service employed intermittently.

(e) It shall be the duty of the Council to—

(1) advise the Secretary in the administration of this part;

(2) provide for the development and distribution, among Statewide Professional Standards Review Councils and Professional Standards Review Organizations of information and data which will assist such review councils and organizations in carrying out their duties and functions;

(3) review the operations of Statewide Professional Standards Review Councils and Professional Standards Review Organizations with a view to determining the effectiveness and comparative performance of such review councils and organizations in carrying out the purposes of this part; and

(4) make or arrange for the making of studies and investigations with a view to developing and recommending to the Secretary and to the Congress measures designed more effectively to accomplish the purposes and objectives of this part.

[(f) Stricken.[161]]

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[158] P.L. 96–499, § 923(c), inserted "physician", effective June 3, 1981.

[158A] P.L. 96–499, § 923(d), deleted "Members" and substituted "Physician members", effective June 3, 1981.

[158B] As in original. Should be "to".

[159] See 5 U.S.C. 5332, in Vol. II, p. 1133.

[160] See 5 U.S.C. 5703, in Vol. II, p. 1136.

[161] P.L. 95–142, § 5(g), struck out subsection (f), effective October 25, 1977. For subsection (f) as it formerly read, see Vol. II, p. 1790.

APPLICATION OF THIS PART TO CERTAIN STATE PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

SEC. 1164. [42 U.S.C. 1320c–13] (a) In addition to the requirements imposed by law as a condition of approval of a State plan approved under any title of this Act under which health care services are paid for in whole or part, with Federal funds, there is hereby imposed the requirement that provisions of this part shall apply to the operation of such plan or program.

(b) The requirement imposed by subsection (a) with respect to such State plans approved under this Act shall apply—

(1) in the case of any such plan where legislative action by the State legislature is not necessary to meet such requirement, on and after January 1, 1974; and

(2) in the case of any such plan where legislative action by the State legislature is necessary to meet such requirement, whichever of the following is earlier—

(A) on and after July 1, 1974, or

(B) on and after the first day of the calendar month which first commences more than ninety days after the close of the first regular session of the legislature of such State which begins after December 31, 1973.

CORRELATION OF FUNCTIONS BETWEEN PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS AND ADMINISTRATIVE INSTRUMENTALITIES

SEC. 1165. [42 U.S.C. 1320c–14] The Secretary shall by regulations provide for such correlation of activities, such interchange of data and information, and such other cooperation consistent with economical, efficient, coordinated, and comprehensive implementation of this part (including, but not limited to, usage of existing mechanical and other data-gathering capacity) between and among—

(a)(1) agencies and organizations which are parties to agreements entered into pursuant to section 1816, (2) carriers which are parties to contracts entered into pursuant to section 1842, and (3) any other public or private agency (other than a Professional Standards Review Organization) having review or control functions, or proved relevant data-gathering procedures and experience, and

(b) Professional Standards Review Organizations, as may be necessary or appropriate for the effective administration of title XVIII, or State plans approved under this Act.

PROHIBITION AGAINST DISCLOSURE OF INFORMATION [162]

SEC. 1166. [42 U.S.C. 1320c–15] (a) Any data or information acquired by any Professional Standards Review Organization, in the exercise of its duties and functions, shall be held in confidence and shall not be disclosed to any person except (1) to the extent that may be necessary to carry out the purposes of this part,[163] (2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights

[162] See P.L. 96–499, § 928, with respect to response of professional standards review organizations to Freedom of Information Act requests, in Vol. II, p. 1739.

[163] P.L. 95–142, § 5(h)(1), deleted "or" and substituted ",", effective October 25, 1977.

and interests of patients, health care practitioners, or providers of health care, or (3) in accordance with subsection (b) [164].

(b) A Professional Standards Review Organization shall provide, in accordance with procedures established by the Secretary, data and information—

(1) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by such organization to such agencies at the request of such agencies at the discretion of such Organization on the basis of its findings with respect to evidence of fraud or abuse; and

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such Organization, and shall be in the form of aggregate statistical data (without identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such Organization.

The penalty provided in subsection (c) shall not apply to the disclosure of any data and information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such data and information) of any such data and information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the data and information.[165]

(c)[166] It shall be unlawful for any person to disclose any such information other than for such purposes, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than six months, or both, together with the costs of prosecution.

(d) No patient record in the possession of a Professional Standards Review Organization, a Statewide Professional Standards Review Council, or the National Professional Standards Review Council shall be subject to subpena or discovery proceedings in a civil action.[167]

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[164] P.L. 95-142, § 5(h)(2), inserted ", or (3) in accordance with subsection (b)", effective October 25, 1977.

[165] P.L. 95-142, § 5(h)(4), added this subsection (b), effective October 25, 1977.

[166] P.L. 95-142, § 5(h)(3), redesignated this former subsection (b) as subsection (c), effective October 25, 1977.

[167] P.L. 95-142, § 5(h)(5), added subsection (d), effective October 25, 1977.

LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION, AND FOR MEMBERS AND EMPLOYEES OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS AND STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCILS,[168] AND FOR HEALTH CARE PRACTITIONERS AND PROVIDERS

SEC. 1167. [42 U.S.C. 1320c-16] (a) Notwithstanding any other provision of law, no person providing information to any Professional Standards Review Organization or to any Statewide Professional Standards Review Council[169] shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law, of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the duties and functions of such Organization or such Council [170], or

(2) such information is false and the person providing such information knew, or had reason to believe, that such information was false.

(b)(1) No individual who, as a member or employee of any Professional Standards Review Organization or of any Statewide Professional Standards Review Council [171] or who furnishes professional counsel or services to such organization or council [172], shall be held by reason of the performance by him of any duty, function, or activity authorized or required of Professional Standards Review Organizations or of Statewide Professional Standards Review Councils [173] under this part, to have violated any criminal law, or to be civilly liable under any law, of the United States or of any State (or political subdivision thereof) provided he has exercised due care.

(2) The provisions of paragraph (1) shall not apply with respect to any action taken by any individual if such individual, in taking such action, was motivated by malice toward any person affected by such action.

(c) No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by a Professional Standards Review Organization (which has been designated in accordance with section 1152(b)(1)(A)) operating in the area where such doctor of medicine or osteopathy or provider took such action but only if—

(1) he takes such action (in the case of a health care practitioner) in the exercise of his profession as a doctor of medicine or osteopathy (or in the case of a provider of health care services) in the exercise of his functions as a provider of health care services, and

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[168] P L. 95-142, § 5(n)(6), added "AND STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCILS", effective October 25, 1977.

[169] P.L. 95-142, § 5(n)(1), added "or to any Statewide Professional Standards Review Council", effective October 25, 1977.

[170] P.L. 95-142, § 5(n)(2), added "or such Council", effective October 25, 1977.

[171] P.L. 95-142, § 5(n)(3), added "or of any Statewide Professional Standards Review Council", effective October 25, 1977.

[172] P.L. 95-142, § 5(n)(4), added "or council", effective October 25, 1977.

[173] P.L. 95-142, § 5(n)(5), added "or of Statewide Professional Standards Review Councils", effective October 25, 1977.

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) The Secretary shall make payment to a Professional Standards Review Organization, whether conditionally designated or qualified, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function of such organization, member, or employee (as described in section 1155).[174]

AUTHORIZATION FOR USE OF CERTAIN FUNDS TO ADMINISTER THE PROVISIONS OF THIS PART

SEC. 1168. [42 U.S.C. 1320c-17] Expenses incurred in the administration of this part shall be payable from—

(a) funds in the Federal Hospital Insurance Trust Fund;

(b) funds in the Federal Supplementary Medical Insurance Trust Fund; and

(c) funds appropriated to carry out the health care provisions of the several titles of this Act;

in such amounts from each of the sources of funds (referred to in subsections (a), (b), and (c)) as the Secretary shall deem to be fair and equitable after taking into consideration the costs attributable to the administration of this part with respect to each of such plans and programs. The Secretary shall make such transfers of moneys between the funds, referred to in clauses (a), (b), and (c) of the preceding sentence, as may be appropriate to settle accounts between them in cases where expenses properly payable from the funds described in one such clause have been paid from funds described in another of such clauses.[175] The Secretary shall make payments to Professional Standards Review Organizations (whether designated on a conditional basis or otherwise) from funds described in the first sentence of this section (without any requirement for the contribution of funds by any State or political subdivision thereof) for expenses incurred in the performance of duties by such Orgnizations [176].

TECHNICAL ASSISTANCE TO ORGANIZATIONS DESIRING TO BE DESIGNATED AS PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 1169. [42 U.S.C. 1320c-18] The Secretary is authorized to provide all necessary technical and other assistance (including the preparation of prototype plans of organization and operation) to organizations described in section 1152(b)(1) which—

(a) express a desire to be designated as a Professional Standards Review Organization; and

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[174] P.L. 95-142, § 5(i), added subsection (d), effective October 25, 1977.

[175] P.L. 94-182, § 112(c), added the preceding sentence, effective with respect to utilization review activities conducted on and after February 1, 1976.

[176] P.L. 95-142, § 5(j), added the preceding sentence, effective October 25, 1977. As in original. Should be "Organizations".

(b) the Secretary determines have a potential for meeting the requirements of a Professional Standards Review Organization;

to assist such organizations in developing a proper plan to be submitted to the Secretary and otherwise in preparing to meet the requirements of this part for designation as a Professional Standards Review Organization.

EXEMPTIONS OF CHRISTIAN SCIENCE SANATORIUMS

SEC. 1170. [42 U.S.C. 1320c–19] The provisions of this part shall not apply with respect to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

MEMORANDUMS OF UNDERSTANDING; FEDERAL-STATE RELATIONS GENERALLY [177]

SEC. 1171. [42 U.S.C. 1320c–20] (a)(1) Except as provided in paragraph (2), no determination made by a Professional Standards Review Organization pursuant to paragraphs (1) and (2) of section 1155(a) in connection with reviews shall constitute conclusive determinations under section 1158(c) for purposes of payment under title XIX, unless such organization has entered into a memorandum of understanding, approved by the Secretary, with the single State agency responsible for administering or supervising the administration of the State plan approved under title XIX for the State in which the organization is located (hereinafter in this section referred to as the "State agency") for the purpose of delineating the relationship between the organization and the State agency and of providing for the exchange of data or information, and for administrative procedures, coordination mechanisms, and modification of the memorandum at any time that additional responsibility for review by the organization is authorized by the Secretary.

(2) The requirement of paragraph (1) may be waived by the Secretary if (A) the State agency indicates to the Secretary that it does not wish to enter into a memorandum of understanding with the organization involved, or (B) the Secretary finds that the State agency has refused to negotiate in good faith or in a timely manner with the organization involved.

(b)(1) The State agency may request a Professional Standards Review Organization which is entering into such a memorandum of understanding with the agency to include in the memorandum a specification of review goals or methods (additional to any such goals or methods contained in the organization's formal plan) for the performance of the organization's duties and functions under this part.

(2) If the agency and the organization cannot reach agreement regarding the inclusion of any such requested specification, the Secretary shall review such specification and shall require that the specification be included in the memorandum to the extent that the Secretary determines that such specification of goals or methods (A) is consistent with the functions of the organization under this part and with the provisions of title XIX and the State's plan

[177] P.L. 95–142, § 5(d)(2)(D), added § 1171, effective October 25, 1977.

approved under such title, and (B) does not seriously impact on the effectiveness and uniformity of the organization's review of health care services paid for under title XVIII and title XIX of this Act.

(c) Notwithstanding any other provision of this Act, the State agency may contract with any Professional Standards Review Organization located in the State for the performance of review responsibilities in addition to those performed pursuant to this part (and the cost of performance of such additional responsibilities is reimbursable as an expense of the State agency under section 1903(a)) if—

(1) the State agency formally requests the performance of such additional responsibilities, and

(2) the performance of such additional responsibilities is not inconsistent with this part and is provided for in an amendment to the State's plan which is approved by the Secretary under title XIX.

(d)(1) Each State agency may monitor the performance of review responsibilities by Professional Standards Review Organizations located within the State, in accordance with a State monitoring plan which is developed after review and comment by such organizations and is approved by the Secretary. The costs of activities of the State agency under and in accordance with such plan are reimbursable as an expense of the State agency under section 1903(a).

(2) A monitoring plan developed and approved under paragraph (1) may include a specification of performance criteria for judging the effectiveness of the review performance of the Professional Standards Review Organizations. If the State agency and the Professional Standards Review Organizations cannot reach agreement regarding such criteria, the Secretary shall assist the agency and organizations in resolving the matters in dispute.

(3)(A) Whenever a State agency monitoring the performance of review responsibilities by a Professional Standards Review Organization under a plan developed and approved under paragraph (1) submits to the Secretary reasonable documentation that the review determinations of such organization have caused an unreasonable and detrimental impact on total State expenditures under title XIX and on the appropriateness of care received by individuals under the State's plan approved under such title, and requests the Secretary to act, the Secretary shall, within thirty days from the date of receipt of the documentation, make a determination as to the reasonableness of the allegation by the State agency. If the Secretary determines that the review determinations of such organization have caused an unreasonable and detrimental impact on total State expenditures under title XIX and on the appropriateness of care received by individuals under the State's plan approved under such title, unless the Secretary determines that the organization has taken appropriate corrective action, he shall immediately suspend such organization's authority in whole or in part under section 1158(c) to make conclusive determinations for purposes of payment under title XIX (and he may suspend such authority for purposes of payment under title XVIII) until he (i) reevaluates such organization's performance of the responsibilities involved and determines that such performance does not have such unreasonable and detrimental impact, or (ii) determines that the organization

has taken appropriate corrective action. Any determination made by the Secretary under this subparagraph shall be final and shall not be subject to judicial review.

(B) The Secretary shall notify the State agency submitting such documentation, and the organization involved, in writing, of his determination, any subsequent actions taken, and the basis thereof, and shall notify the appropriate committees of the United States House of Representatives and the Senate of any such documentation submitted and the actions taken.

(e)(1) The Secretary shall in a timely manner establish procedures and mechanisms to govern his relationships with State agencies under this part (specifically including his relationships with such agencies in connection with their respective functions under the preceding provisions of this section). Such mechanisms shall include periodic consultation by the Secretary with State agency representatives and representatives of Professional Standards Review Organizations regarding relationships between such agencies and such organizations (including the appropriate exchange of data and information between such agencies and such organizations) and other problems of mutual concern, and such procedures shall permit the State agency to be represented on any project assessments conducted by the Secretary with respect to a Professional Standards Review Organization located within its State.

(2) Each Professional Standards Review Organization shall provide to the State agency for the State in which it is located, upon request, data or information which the Secretary requires such organizations to report to him routinely on a periodic basis, and such other data or information as the Secretary authorizes to be disclosed.

ANNUAL REPORTS [178]

SEC. 1172. [42 U.S.C. 1320c–21] The Secretary shall submit to the Congress not later than April 1, 1978, and not later than April 1 of each year thereafter, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status (conditional or otherwise), and service areas of, and review methodologies employed by, all Professional Standards Review Organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by Professional Standards Review Organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

(3) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part;

(4) the total costs incurred under titles V, XI, XVIII, and XIX of this Act in the implementation and operation of all procedures required by such titles for the review of services to

[178] P.L. 95–142, § 5(k), added § 1172, effective October 25, 1977.

determine their medical necessity, appropriateness of use, and quality;

(5) changes in utilization rates and patterns, and changes in medical procedures and practices, attributable to the activities of Professional Standards Review Organizations;

(6) the results of program evaluation activities, including the operation of data collection systems and the status of Professional Standards Review Organization data policy and implementation;

(7) the extent to which Professional Standards Review Organizations are performing reviews of services for other governmental or private health insurance programs; and

(8) recommendations for legislative changes.

MEDICAL OFFICERS IN AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO BE INCLUDED IN THE PROFESSIONAL STANDARDS REVIEW PROGRAM[179]

SEC. 1173. [42 U.S.C. 1320c-22] For purposes of applying this part (except section 1155(c)[180]) to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.

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[179] P.L. 95-142, § 5(l)(1), added § 1173, effective October 25, 1977.

[180] P.L. 96-499, § 923(e), deleted "sections 1155(c) and 1163" and substituted "section 1155(c)", effective June 3, 1981.

TITLE XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS [1]

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ADVANCES TO STATE UNEMPLOYMENT FUNDS [3]

SECTION 1201. [42 U.S.C. 1321] (a)(1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, without interest, in the manner provided in sections 901(d)(1), 903(b)(2), and 1202. An advance to a State for the payment of compensation in any 3-month period [4] may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the month preceding the first month of such 3-month period [5], and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in each month of such 3-month period [6].

(2) In the case of any application for an advance under this section to any State for any 3-month period [7], the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in each month of such 3-month period [8], and

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[1] Title XII of the Social Security Act is administered by the Department of Labor.

Title XII appears in the United States Code as §§ 1321–1324, subchapter XII, chapter 7, title 42.

Regulations of the Secretary of Labor relating to title XII are contained in chapter V, title 20, Code of Federal Regulations.

[2] This table of contents does not appear in the law.

[3] See P.L. 94-45, § 110(b), with respect to repayment of loans; and § 301(c), with respect to interest on loans to the Virgin Islands, in Vol. II, p. 1648.

See Internal Revenue Code of 1954, § 3302(c)(3), with respect to advances to a State or State agency, in Vol. I, p. 739.

P.L. 94-566, § 116(a), effective January 1, 1978, amended § 1101 of this act to include the Virgin Islands within the definition of "State".

See P.L. 96-499, § 1025, with respect to withholding certification of State unemployment laws, in Vol. II, p. 1744.

[4] P.L. 94-566, § 213(a)(1), deleted "month" and substituted "3-month period", effective October 20, 1976.

[5] P.L. 94-566, § 213(a)(2), deleted "preceding month" and substituted "month preceding the first month of such 3-month period", effective October 20, 1976.

[6] P.L. 94-566, § 213(a)(3), deleted "such month" and substituted "each month of such 3-month period", effective October 20, 1976.

[7] P.L. 94-566, § 213(b)(1), deleted "month" and substituted "3-month period", effective October 20, 1976.

[8] P.L. 94-566, § 213(b)(2), deleted "such month" and substituted "each month of such 3-month period", effective October 20, 1976.

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any 3-month period [7] shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to each month of such 3-month period [8].

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this title,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term "compensation" means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer in monthly installments [9] from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 903(b)(1)). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.[10]

REPAYMENT BY STATES OF ADVANCES TO STATE UNEMPLOYMENT FUNDS

SEC. 1202. [42 U.S.C. 1322] The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1201, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

ADVANCES TO FEDERAL UNEMPLOYMENT ACCOUNT [11]

SEC. 1203. [42 U.S.C. 1323] There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances (without interest), such sums as may be necessary to

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[9] P.L. 94-566, § 213(c)(1), added "in monthly installments", effective October 20, 1976.
[10] P.L. 94-566, § 213(c)(2), added the preceding sentence, effective October 20, 1976.
[11] P.L. 94-274, § 201(12), effective April 21, 1976, provided that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of this section.

carry out the purposes of this title. Whenever, after the application of sections 901(f)(3) and 902(a) with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances.

DEFINITION OF GOVERNOR

SEC. 1204. [42 U.S.C. 1324] When used in this title, the term "Governor" includes the Commissioners of the District of Columbia.

TITLE XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN[1]

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SEC. 1301. [42 U.S.C. 1331] This title shall be administered by the Secretary of Labor.[3]

DEFINITIONS

SEC. 1302. [42 U.S.C. 1332] When used in this title—

(a) The term "reconversion period" means the period (1) beginning with the fifth Sunday after the date of the enactment of this title, and (2) ending June 30, 1950.

(b) The term "compensation" means cash benefits payable to individuals with respect to their unemployment (including any portion thereof payable with respect to dependents).

(c) The term "Federal maritime service" means service performed prior to July 1, 1949, which is determined to be employment pursuant to section 209(o).

(d) The term "Federal maritime wages" means remuneration determined pursuant to section 209(o) to be remuneration for service referred to in section 209(o)(1), which was performed prior to July 1, 1949.

COMPENSATION FOR SEAMEN

SEC. 1303. [42 U.S.C. 1333] (a) The Secretary of Labor is authorized on behalf of the United States to enter into an agreement with any State, or with the unemployment compensation agency of such State, under which such State agency (1) will make, as agent of the United States, payments of compensation, on the basis provided in subsection (b), to individuals who have performed Federal maritime service, and (2) will otherwise cooperate with the Secretary of

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[1] P.L. 79-719 (60 Stat. 978, approved August 10, 1946), § 306, added this title. This title has been inactive since the reconversion period ended in 1950.

[2] This table of contents does not appear in the law.

[3] By Reorganization Plan No. 2 of 1949 (14 F.R. 5225, 63 Stat. 1065), § 1, effective August 19, 1949, "The functions of the Federal Security Administrator with respect to * * * unemployment compensation, and the Bureau of Employment Security, together with his functions under the Federal Unemployment Tax Act (as amended, and as affected by the provisions of Reorganization Plan No. 2 of 1946 (60 Stat. 1095, 26 U.S.C. 1600-11), are transferred to the Secretary of Labor." The editors of this compilation have followed the precedents established by the codifiers of the United States Code as a result of other similar reorganizations and have taken the liberty of substituting "Secretary of Labor" for "Federal Security Administrator" where applicable. Otherwise, references to the "Administrator" are to the "Federal Security Administrator".

Labor and with other State unemployment compensation agencies in making payments of compensation authorized by this title.

(b) Any such agreement shall provide that compensation will be paid to such individuals, with respect to unemployment occurring in the reconversion period, in the same amounts, on the same terms, and subject to the same conditions as the compensation which would be payable to such individuals under the State unemployment compensation law if such individuals' Federal maritime service and Federal maritime wages had (subject to regulations of the Secretary of Labor concerning the allocation of such service and wages among the several States) been included as employment and wages under such law; except that the compensation to which an individual is entitled under such an agreement for any week shall be reduced by 15 per centum of the amount of any annuity or retirement pay which such individual is entitled to receive, under any law of the United States relating to the retirement of officers or employees of the United States, for the month in which such week begins, unless a deduction from such compensation on account of such annuity or retirement pay is otherwise provided for by the applicable State law.

(c) If in the case of any State an agreement is not entered into under this section or the unemployment compensation agency of such State fails to make payments in accordance with such an agreement, the Secretary of Labor, in accordance with regulations prescribed by him, shall make payments of compensation to individuals who file a claim for compensation which is payable under such agreement, or would be payable if such agreement were entered into, on a basis which will provide that they will be paid compensation in the same amounts, on substantially the same terms, and subject to substantially the same conditions as though such agreement had been entered into and such agency made such payments. Final determinations by the Secretary of Labor of entitlement to such payments shall be subject to review by the courts in the same manner and to the same extent as is provided in Title II with respect to decisions by the Administrator under such title.

(d) Operators of vessels who are or were general agents of the War Shipping Administration or of the United States Maritime Commission shall furnish to individuals who have been in Federal maritime service, to the appropriate State agency, and to the Secretary of Labor such information with respect to wages and salaries as the Secretary of Labor may determine to be practicable and necessary to carry out the purposes of this title.

(e) Pursuant to regulations prescribed by the Secretary of Labor, he, and any State agency making payments of compensation pursuant to an agreement under this section, may—

(1) to the extent that the Secretary of Labor finds that it is not feasible for Federal agencies or operators of vessels to furnish information necessary to permit exact and reasonably prompt determinations of the wages or salaries of individuals who have performed Federal maritime service, determine the amount of and pay compensation to any individual under this section, or an agreement thereunder, as if the wages or salary paid such individual for each week of such service were in an amount equal to his average weekly wages or salary for the

last pay period of such service occurring prior to the time he files his initial claim for compensation; and

(2) to the extent that information is inadequate to assure the prompt payment of compensation authorized by this section (either on the basis of the exact wages or salaries of the individuals concerned or on the basis prescribed in clause (1) of this subsection), accept certification under oath by individuals of facts relating to their Federal maritime service and to wages and salaries paid them with respect to such service.

ADMINISTRATION

SEC. 1304. [42 U.S.C. 1334] (a) Determinations of entitlement to payments of compensation by a State unemployment compensation agency under an agreement under this title shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in such manner and to such extent.

(b) For the purpose of payments made to a State under Title III administration by the unemployment compensation agency of such State pursuant to an agreement under this title shall be deemed to be a part of the administration of the State unemployment compensation law.

(c) The State unemployment compensation agency of each State shall furnish to the Secretary of Labor such information as the Secretary of Labor may find necessary in carrying out the provisions of this title, and such information shall be deemed reports required by the Secretary of Labor for the purposes of section 303(a)(6).

PAYMENTS TO STATES

SEC. 1305. [42 U.S.C. 1335] (a) Each State shall be entitled to be paid by the United States an amount equal to the additional cost to the State of payments of compensation made under and in accordance with an agreement under this title, which would not have been incurred by the State but for the agreement.

(b) In making payments pursuant to subsection (a) of this section, there shall be paid to the State, either in advance or by way of reimbursement, as may be determined by the Secretary of Labor, such sum as the Secretary of Labor estimates the State will be entitled to receive under this title for each calendar quarter; reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the State. The amount of such payments may be determined by such statistical, sampling, or other method as may be agreed upon by the Secretary of Labor and the State agency.

(c) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment, at the time or times fixed by the Secretary of Labor, in accordance with certification, from the funds for carrying out the purpose of this title. Notwithstanding any other provision of this title, no compensation shall be paid to any

individual pursuant to this title with respect to unemployment occurring prior to the date when funds are made available for such payments.

(d) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury upon termination of the agreement or termination of the reconversion period, whichever first occurs.

(e) An agreement under this title may require any officer or employee of the State certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in its performance, to give a surety bond to the United States in such amount as the Secretary of Labor may deem necessary, and may provide for the payment of the cost of such bond from appropriations for carrying out the purposes of this title.

(f) No person designated by the Secretary of Labor, or designated pursuant to an agreement under this title, as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any compensation certified by him under this title.

(g) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this title if it was based upon a voucher signed by a certifying officer designated as provided in subsection (f).

PENALTIES

SEC. 1306. [42 U.S.C. 1336] (a) Whoever, for the purpose of causing any compensation to be paid under this title or under an agreement thereunder where none is authorized to be so paid, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any compensation authorized to be paid under this title or under an agreement thereunder, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) Whoever shall obtain or receive any money, check or compensation under this title or an agreement thereunder, without being entitled thereto and with intent to defraud the United States, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) Whoever willfully fails or refuses to furnish information which the Secretary of Labor requires him to furnish pursuant to authority of section 1303(d), or willfully furnishes false information pursuant to a requirement of the Secretary of Labor under such subsection, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than six months, or both.

[TITLE XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED] [1]

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APPROPRIATION

SECTION 1401. [42 U.S.C. 1351] For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such

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[1] P.L. 92-603, § 303, *repealed* title XIV, effective January 1, 1974, *except* with respect to Puerto Rico, Guam, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a title XIV social services program if it chooses; see P.L. 94-241, approved March 24, 1976, 90 Stat. 263, in Appendix E, in Vol. II, p. 1016.

Title XIV of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under title XIV. The Administration for Public Services, Office of Human Development Services, administers social services under title XIV.

Title XIV appears in the United States Code as §§ 1351-1355, subchapter XIV, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title XIV are contained in chapter 1, title 42, and subtitle A and chapter XIII, title 45, Code of Federal Regulations.

See P.L. 82-183, § 618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions, in Vol. II, p. 1528.

See P.L. 87-543, § 141(b), with respect to ineligibility to receive payments under title XIV where payments have been made under title XVI, in Vol. II, p. 1555.

See P.L. 88-352 (Civil Rights Act of 1964), for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 89-97, § 121(b), with respect to restrictions on payment to a State receiving payments under title XIX, in Vol. II, p. 1435.

See P.L. 90-248 (Social Security Amendments of 1967), § 234(c), regarding nursing homes which do not meet all requirements of the State for licensure, in Vol. II, p. 1444.

See P.L. 90-577, §§ 2-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 93-66, § 213, with respect to recruitment and selection of employees to administer the Federal supplemental security income program, in Vol. II, p. 1472.

See P.L. 93-233, § 11, with respect to continuation of certain demonstration projects for States other than the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, in Vol. II, p. 1614.

See P.L. 93-233, § 19(b), with respect to the transition from State plans to the Federal supplemental security income program, in Vol. II, p. 1617.

See P.L. 93-510, §§ 2-13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and co-operative agreements, in Vol. II, p. 1682.

See P. L. 95-291, §§ 1, 2, and 5, with respect to reimbursement of certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

See P.L. 96-223, § 313(c)(1), with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1735.

[1A] This table of contents does not appear in the law.

individuals attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the permanently and totally disabled.

STATE PLANS FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

SEC. 1402. [42 U.S.C. 1352] (a) A State plan for aid to the permanently and totally disabled must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan [2], and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act, aid to families with dependent children under the State plan approved under section 402 of this Act, or aid to the blind

[2] P.L. 91-648, § 208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). See P.L. 91-648, § 208(a)(3)(D), in Vol. II, p. 1598.

under the State plan approved under section 1002 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation;[3] (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;[4] (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1,

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[3] See § 1109 of this Act.

See P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing, in Vol. II, p. 1527.

See P.L. 88-525 (Food Stamp Act of 1977), § 8, with respect to exclusion from income and resources of the value of food stamps, in Vol. II, p. 1422.

See P.L. 89-73 (Older Americans Act of 1965), § 709, with respect to the exclusion from income applicable before October 1, 1978, to the cost of a "nutrition project" which supplied at least one hot meal a day to eligible recipients, and § 211(b), with respect to an exclusion applicable to other project costs, in Vol. II, p. 1574.

See P.L. 90-575 (Higher Education Amendments of 1968), § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), § 216, with respect to exclusion from income of payments made under that act, in Vol. II, p. 1597.

See P.L. 93-86 (Agriculture and Consumer Protection Act of 1973), § 4(c), with respect to the effect of receipt of Supplemental Security Income benefits (under title XVI of this act) in determining eligibility for food stamps of other members of the household, in Vol. II, p. 1607.

See P.L. 93-112 (Rehabilitation Act of 1973), § 613(c), for the conditional exclusion from income of wages, allowances, transportation reimbursement, and attendant care provided to handicapped individuals under community service employment pilot programs, in Vol. II, p. 1489.

See P.L. 93-113 (Domestic Volunteer Service Act of 1973), § 404(g), with respect to exclusion from income and resources of payments to volunteers under that act, in Vol. II, p. 1610.

See P.L. 93-203 (Comprehensive Employment and Training Act of 1973), § 446, with respect to exclusion from income and resources of earnings and allowances received by a youth under Youth Employment Demonstration Programs in determining eligibility of the youth's family for, and the amount of, benefits, in Vol. II, p. 1612.

See P.L. 94-164 (Revenue Adjustment Act of 1975), § 2(d), with respect to exclusion from income and resources of certain Federal income tax credits/refunds before January 1, 1980, in Vol. II, p. 1654.

See P.L. 95-171, § 10(d), for exclusion from income of certain income related to putting sitters in touch with individuals who wished to employ them, in Vol. II, p. 1679.

See P.L. 95-557 (Housing and Community Development Amendments of 1978), § 410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the Housing Act of 1959 (see P.L. 86-372, § 202, in Vol. II, p. 1543), in Vol. II, p. 1698.

[4] See P.L. 82-183, § 618 (Jenner Amendment), prohibiting denial of grants-in-aid under certain conditions, in Vol. II, p. 1528.

1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title.

PAYMENT TO STATES

SEC. 1403. [42 U.S.C. 1353] (a) From the sums appropriated therefor, the Secretary of the Treasury shall [5] pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 3 1/37 of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $37 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the permanently and totally disabled in the form of

[5] P.L. 93–647, § 3(e)(2), deleted "(subject to section 1130)", effective with respect to payments under §§ 403 and 603 of the Social Security Act for quarters commencing after September 30, 1975.

money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the permanently and totally disabled in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $75 multiplied by the total number of such recipients of aid to the permanently and totally disabled for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such months; and [6]

(3) in the case of any State whose State plan approved under section 1402 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c)(1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the permanently and totally disabled, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to

[6] See § 1108 of this Act.

students enrolled in such institutions)[7] of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus [8]

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided,* That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act [9] (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) under conditions which shall be prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act [9] or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for

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[7] P.L. 93-647, § 5(d), added "(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)", (as applicable to Puerto Rico, the Virgin Islands, and Guam) effective with respect to payments for quarters commencing after September 30, 1975.

[8] See P.L. 93-233, § 12, regarding the effective date of regulations pertaining to this subparagraph, in Vol. II, p. 1615.

[9] P.L. 93-112, § 500(a), repealed the Vocational Rehabilitation Act, effective December 25, 1973, and deems references to that law to be to the Rehabilitation Act of 1973; see Vol. II, p. 1475.

administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1402 does not meet the requirements of subsection (c)(1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided,* That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c)(1) In order for a State to qualify for payments under paragraph (3) of subsection (a), its State plan approved under section 1402 must provide that the State agency shall make available to applicants for or recipients of aid to the permanently and totally disabled at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (4) of such subsection.

OPERATION OF STATE PLANS

SEC. 1404. [42 U.S.C. 1354] In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1402 (a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he is satisfied that such prohibited requirement is no longer so imposed and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

DEFINITION

SEC. 1405. [42 U.S.C. 1355] For the purposes of this title, the term "aid to the permanently and totally disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of, needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1402 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need [10] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i) [11] need not include money payments to an

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[10] As in original. Should be "needs".

[11] P.L. 92-603, § 409(c), inserted "(i)", and ", and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan", effective October 30, 1972. This amendment has been executed as if it applies to § 1405 as amended by P.L. 92-603, § 408(c) (instead of § 554(c), a number beyond those included in P.L. 92-603).

individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan [11].

[TITLE XV—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES][1]

[1] P.L. 83-767 (68 Stat. 1130, approved September 1, 1954), § 4(a), added title XV to the Social Security Act.

P.L. 89-554 (80 Stat. 378, approved September 6, 1966), § 8, repealed title XV. See 5 U.S.C. 8501 et seq. in Vol. II, p. 1145.

[TITLE XVI—GRANTS TO STATES FOR AID TO THE AGED, BLIND, OR DISABLED, OR FOR SUCH AID AND MEDICAL ASSISTANCE FOR THE AGED][1]

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APPROPRIATION

SECTION 1601. [42 U.S.C. 1381 note] For the purpose (a) of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled, (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of individuals who are 65 years of age

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[1] This title XVI of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under this title XVI. The Administration for Public Services, Office of Human Development Services, administers social services under this title XVI.

This title XVI appears in the United States Code as §§ 1381 note—1385 note, subchapter XVI, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services with respect to this title XVI are contained in subtitle A and chapter XIII, title 45, Code of Federal Regulations.

P.L. 92-603, §§ 301 and 303, *repealed* this title effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a title XVI social services program if it chooses; see P.L. 94-241, approved March 24, 1976, in Appendix E, in Vol. II, p. 1016.

See P.L. 82-183, § 618, for the "Jenner Amendment" with respect to prohibition against denial of grants-in-aid under certain conditions, in Vol. II, p. 1528.

See P.L. 88-352 (Civil Rights Act of 1964), with respect to prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 89-97, § 121(b), with respect to restrictions on payment to a State receiving payments under title XIX, in Vol. II, p. 1435.

See P.L. 90-248 (Social Security Amendments of 1967), § 234(c), with respect to nursing homes which do not meet all requirements of the State for licensure, in Vol. II, p. 1444.

See P.L. 90-577, §§ 2-403 and §§ 601-604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 93-66, § 213, with respect to recruitment and selection of employees to administer the Federal supplemental security income program, in Vol. II, p. 1472.

See P.L. 93-233, § 11, with respect to continuation of certain demonstration projects for States other than the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, in Vol. II, p. 1614.

See P.L. 93-233, § 19(b), with respect to transition from State plans to the Federal supplemental security income program, in Vol. II, p. 1617

See P.L. 93-510, §§ 2-13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 95-224, §§ 2-10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

See P.L. 95-291, §§ 1, 2, and 5, with respect to reimbursement of certain expenditures for social services provided by the States prior to October 1, 1975, in Vol. II, p. 1692.

See P.L. 96-223, § 313(c)(1), with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1735.

[2] This table of contents does not appear in the law.

or over and who are not recipients of aid to the aged, blind, or disabled but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged.

STATE PLANS FOR AID TO THE AGED, BLIND, OR DISABLED, OR FOR SUCH AID AND MEDICAL ASSISTANCE FOR THE AGED

SEC. 1602. [42 U.S.C. 1382 note] (a) A State plan for aid to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged, must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan [3], and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volun-

[3] P.L. 91-648, § 208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). See P.L. 91-648, § 208(a)(3)(D), in Vol. II, p. 1598.

teers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under title I or aid under the State plan approved under part A of title IV or under title X or XIV;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the

case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned income, the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first $80 per month of earned income the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income;[4]

(15) if the State plan includes medical assistance for the aged—

(A) provide for inclusion of some institutional and some noninstitutional care and services;

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[4] See P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing, in Vol. II, p. 1527.

See P.L. 88-525 (Food Stamp Act of 1977), § 8, with respect to the exclusion from income and resources of the value of food stamps, in Vol. II, p. 1422.

See P.L. 89-73 (Older Americans Act of 1965), § 709, with respect to the exclusion from income applicable before October 1, 1978, to the cost of a "nutrition project" which supplied at least one hot meal a day to eligible recipients, and § 211(b), with respect to an exclusion applicable to other project costs, in Vol. II, p. 1574.

See P.L. 90-575 (Higher Education Amendments of 1968), § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), § 216, with respect to exclusion from income of payments made, in Vol. II, p. 1597.

See P.L. 93-86 (Agriculture and Consumer Protection Act of 1973), § 4(c), with respect to the effect of receipt of Supplemental Security Income benefits under this act in determining eligibility for food stamps of other members of the household, in Vol. II, p. 1607.

See P.L. 93-112 (Rehabilitation Act of 1973), § 613(c), with respect to the conditional exclusion from income of wages, allowances, transportation reimbursement, and attendant care provided to handicapped individuals under community service employment pilot programs, in Vol. II, p. 1489.

See P.L. 93-113 (Domestic Volunteer Services Act of 1973), § 404(g), with respect to the exclusion from income and resources of payments to volunteers, in Vol. II, p. 1610.

See P.L. 93-203 (Comprehensive Employment and Training Act of 1973), § 446, with respect to exclusion from income and resources of earnings and allowances received by youth under Youth Employment Demonstration Programs in determining eligibility of youth's family for, and the amount of, benefits, in Vol. II, p. 1612.

See P.L. 94-164 (Revenue Adjustment Act of 1975), § 2(d), with respect to exclusion from income and resources of certain Federal income tax credits/refunds before January 1, 1980, in Vol. II, p. 1654.

See P.L. 95-171, § 10(d), with respect to exclusion from income of certain income from putting sitters in touch with individuals who wished to employ them, in Vol. II, p. 1679.

See P.L. 95-557 (Housing and Community Development Amendments of 1978), § 410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the Housing Act of 1959 (see P.L. 86-372, § 202, in Vol. II, p. 1543), in Vol. II, p. 1698.

(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State but are absent therefrom; and

(D) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;

(16) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 1603(a)(4)(A)(i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients; and

(17) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X was different from the State agency which administered or supervised the administration of the plan of such State approved under title I and the State agency which administered or supervised the administration of the plan of such State approved under title XIV, the State agency which administered or supervised the administration of such plan approved under title X may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for aid to the aged, blind, or disabled excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title. In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950[5] were applicable on January 1, 1962, and to which the sentence of section 1002(b) following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical

[5] P.L. 87-543, § 136(b), repealed § 344, effective July 25, 1962.

assistance for the aged) was submitted for approval under this title, the Secretary shall approve the plan of such State for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) for purposes of this title, even though it does not meet the requirements of paragraph (14) of subsection (a), if it meets all other requirements of this title for an approved plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged); but payments under section 1603 shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1603 under a plan approved under this section without regard to the provisions of this sentence.

(c) Subject to the last sentence of subsection (a), nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

PAYMENTS TO STATES

SEC. 1603. [42 U.S.C. 1383 note] (a) From the sums appropriated therefor, the Secretary shall[6] pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 3 1/37 of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of $37 multiplied by the total number of recipients of such aid for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received such aid in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care); plus

(B) the larger of the following:

(i) (I) the Federal percentage (as defined in section 1101(a)(8)) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, plus (II) 15 per centum of the total expended during such month

[6] P.L. 93-647, § 3(e)(2), deleted "(subject to section 1130)", effective with respect to payments under §§ 403 and 603 of this Act for quarters commencing after September 30, 1975.

as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month as exceeds the product of $15 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, or

(ii) (I) the Federal medical percentage (as defined in section 6(c)) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of $52 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (b) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of $37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as aid to the aged, blind, or disabled under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B)(ii), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of $45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (II) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of $37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not

counting so much of any expenditure with respect to any month as exceeds the product of $7.50 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 6(c)) of the total amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and

(4) in the case of any State whose State plan approved under section 1602 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid or assistance under the plan to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c)(1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid or assistance under the plan, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)[7] of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus [8]

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid or assistance under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or

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[7] P.L. 93-647, § 5(e), added "(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled at such institutions)" (as applicable to Puerto Rico, the Virgin Islands, and Guam), effective with respect to payments for quarters commencing after September 30, 1975.

[8] See P.L. 93-66, § 220, regarding postponement of effective date of regulations, in Vol. II, p. 1473. See P.L. 93-233, § 12(a), regarding effective date of social services regulations, in Vol. II, p. 1615.

are likely to become applicants for or recipients of such aid or assistance; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided,* That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act[9] (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) under conditions which shall be prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act[9] or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(5) in the case of any State whose State plan approved under section 1602 does not meet the requirements of subsection (c)(1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance with the provisions of such paragraph.[10]

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report

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[9] P.L. 93-112, § 500(a), repealed the Vocational Rehabilitation Act, effective December 25, 1973, and deems references to that law to be to the Rehabilitation Act of 1973; see Vol. II, p. 1475.

[10] See § 1108 of this Act.

filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c)(1) In order for a State to qualify for payments under paragraph (4) of subsection (a), its State plan approved under section 1602 must provide that the State agency shall make available to applicants for or recipients of aid to the aged, blind, or disabled under such State plan at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (5) of such subsection.

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to indi-

viduals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

OPERATION OF STATE PLANS

SEC. 1604. [42 U.S.C. 1384 note] If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1602; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

DEFINITIONS

SEC. 1605. [42 U.S.C. 1385 note] (a) For purposes of this title, the term "aid to the aged, blind, or disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1602 includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need [10A] of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i)[11] need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan [11].

(b) For purposes of this title, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for

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[10A] As in original. Should be "needs".

[11] P.L. 92-603, § 409(d), inserted "(i)", and ", and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan", effective October 30, 1972. This amendment has been executed as if it applies to § 1605(a) as amended by P.L. 92-603, § 408(d) (instead of § 554(d), a number beyond those included in P.L. 92-603).

individuals who are sixty-five years of age or older and who are not recipients of aid to the aged, blind, or disabled (except, for any month, for recipients of aid to the aged, blind, or disabled who are admitted to or discharged from a medical institution during such month) but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services;

(2) skilled nursing-home services;

(3) physicians' services;

(4) outpatient hospital or clinic services;

(5) home health care services;

(6) private duty nursing services;

(7) physical therapy and related services;

(8) dental services;

(9) laboratory and X-ray services;

(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices;

(11) diagnostic, screening, and preventive services; and

(12) any other medical care or remedial care recognized under State law;

except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution).

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED [1]

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[1] This title XVI of the Social Security Act is administered by the Social Security Administration, Department of Health and Human Services (formerly Department of Health, Education, and Welfare).

This title XVI appears in the United States Code as §§ 1381–1383c, subchapter XVI, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services with respect to this title XVI are contained in chapter III, title 20, Code of Federal Regulations.

See P.L. 88-525 (Food Stamp Act of 1977), § 11, with respect to the acceptance by social security offices of applications for participation in the food stamp program from recipients of supplemental security income, in Vol. II, p. 1423.

See P.L. 93-66, § 213, with respect to recruitment and selection of employees to administer the Federal supplemental security income program, in Vol. II, p. 1472.

See P.L. 93-233, § 19(b), with respect to the transition from State plans to the Federal supplemental security income program, in Vol. II, p. 1617.

See P.L. 94-12, § 702, effective March 29, 1975, with respect to a special $50 payment made by the Treasury Department, in Vol. II, p. 1646.

P.L. 94-241 (Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America), § 1 (§ 502 of Covenant), approved March 24, 1976, provides that this title XVI is applicable to the Northern Mariana Islands, except as otherwise provided. Effective 11 A.M. of January 9, 1978, Northern Mariana Islands local time (Presidential Proclamation 4534, signed October 24, 1977; 42 FR 56593, October 27, 1977). See P.L. 94-241, in Appendix E, in Vol. II, p. 1016.

See P.L. 95-30, § 406, effective May 23, 1977, with respect to termination of special $50 payments, in Vol. II, p. 1675.

See P.L. 95-602, § 401(c), with respect to a study of research and demonstration projects, in Vol. II, p. 1700.

See P.L. 96-223, § 308(h), with respect to authority for the Social Security Administration to make low-income energy assistance payments on behalf of a State, and § 313(c)(1) with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1734.

See P.L. 96-265, § 312, with respect to the Secretary's report to Congress on the effect of certain amendments affecting claims for disability insurance benefits, in Vol. II, p. 1506.

[2] This table of contents does not appear in the law.

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PURPOSE; APPROPRIATIONS

SEC. 1601. [42 U.S.C. 1381] For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this title.

BASIC ELIGIBILITY FOR BENEFITS

SEC. 1602. [42 U.S.C. 1381a] Every aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Secretary of Health, Education, and Welfare.

PART A—DETERMINATION OF BENEFITS

ELIGIBILITY FOR AND AMOUNT OF BENEFITS [3]

Definition of Eligible Individual [4]

SEC. 1611. [42 U.S.C. 1382] (a)(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

[3] See P.L. 93-66, § 211, with respect to supplemental security income benefits for essential persons, in Vol. II, p. 1469.

[4] The income amounts as determined under section 1617 and published in the Federal Register are shown below with the effective month of the increase and the numbers for the Federal Register volume and page locations:

Effective date	Individual	Individual and spouse	Federal Register citation
Prior	$1,752.00	$2,628.00	
July 1975	1,892.40	2,839.20	40 FR 22289
July 1976	2,013.60	3,021.60	41 FR 19999
July 1977	2,133.60	3,200.40	42 FR 24210
July 1978	2,272.80	3,409.20	43 FR 20867
July 1979	2,498.40	3,747.60	44 FR 28423
July 1980	2,856.00	4,284.00	45 FR 31781

(A) whose income, other than income excluded pursuant to section 1612(b), is at a rate of not more than $1,752[5][6] (or, if greater, the amount determined under section 1617)[7] for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1613(a), are not more than (i) in case such individual has a spouse with whom he is living, $2,250, or (ii) in case such individual has no spouse with whom he is living, $1,500,

shall be an eligible individual for purposes of this title.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1612(b), is at a rate of not more than $2,628[5][6] (or, if greater, the amount determined under section 1617)[7] for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1613(a), are not more than $2,250,

shall be an eligible individual for purposes of this title.

Amounts of Benefits

(b)(1) The benefit under this title for an individual who does not have an eligible spouse shall be payable at the rate of $1,752[8][9] (or, if greater, the amount determined under section 1617)[10] for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1612(b), of such individual.

(2) The benefit under this title for an individual who has an eligible spouse shall be payable at the rate of $2,628[8][9] (or, if greater, the amount determined under section 1617)[10] for the calendar year 1974 and any calendar year thereafter, reduced by the

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[5] P.L. 93-66, § 210(a), deleted "$1,560" and substituted "$1,680", and § 210(b) deleted "$2,340" and substituted "$2,520", effective with respect to months after June 1974.
P.L. 93-233, § 4(a)(1), changed that effective date from June 1974 to December 1973.

[6] P.L. 93-233, § 4(b)(1), deleted "$1,680" and substituted "$1,752", and § 4(b)(2), deleted "$2,520" and substituted "$2,628", effective with respect to months after June 1974.

[7] P.L. 93-368, § 6(a), added "(or, if greater, the amount determined under section 1617)", effective August 7, 1974.

[8] P.L. 93-66, § 210(a), deleted "$1,560" and substituted "$1,680" and § 210(b) deleted "$2,340" and substituted "$2,520", effective with respect to payments for months after June 1974.
P.L. 93-233, § 4(a)(1), changed that effective date from June 1974 to December 1973.

[9] P.L. 93-233, § 4(b)(1), deleted "$1,680" and substituted "$1,752", and § 4(b)(2) deleted "$2,520" and substituted "$2,628", effective with respect to payments for months after June 1974.

[10] P.L. 93-368, § 6(a), added "(or, if greater, the amount determined under section 1617)", effective August 7, 1974.

amount of income, not excluded pursuant to section 1612(b), of such individual and spouse.[11]

Period for Determination of Benefits

(c)(1) An individual's eligibility for benefits under this title and the amount of such benefits shall be determined for each quarter of a calendar year except that, if the initial application for benefits is filed in the second or third month of a calendar quarter, such determinations shall be made for each month in such quarter. Eligibility for and the amount of such benefits for any quarter shall be redetermined at such time or times as may be provided by the Secretary.

(2) For purposes of this subsection an application shall be considered to be effective as of the first day of the month in which it was actually filed.

Special Limits on Gross Income

(d) The Secretary may prescribe the circumstances under which, consistently with the purposes of this title, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this title. For purposes of this subsection, the term "gross income" has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1954.

Limitation on Eligibility of Certain Individuals

(e)(1)(A) Except as provided in subparagraph[11A] (B) and (C)[12], no person shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, the benefit under this title for such individual for such month shall be payable—

(i) at a rate not in excess of $300 per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $300 per year (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the one who is in such hospital, home, or facility), and

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[11] See P.L. 93-335, § 2(b)(2), with respect to adjustment of supplemental security income payments due to receipt of food stamps under the Food Stamp Act of 1964 (P.L. 88-525, approved August 31, 1964), in Vol. II, p. 1621.

[11A] As in original. Should be "subparagraphs".

[12] P.L. 94-566, § 505(a), added "and (C)", effective October 1, 1976.

(II) the applicable rate specified in subsection (b)(1) (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the other); and [13]

(iii) at a rate not in excess of $600 per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

(C) As used in subparagraph (A), the term "public institution" does not include a publicly operated community residence which serves no more than 16 residents.[14]

(2) No person shall be an eligible individual or eligible spouse for purposes of this title if, after notice to such person by the Secretary that it is likely that such person is eligible for any payments of the type enumerated in section 1612(a)(2)(B), such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3)(A) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if such individual is medically determined to be a drug addict or an alcoholic unless such individual is undergoing any treatment that may be appropriate for his condition as a drug addict or alcoholic (as the case may be) at an institution or facility approved for purposes of this paragraph by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of such treatment and with requirements imposed by the Secretary under subparagraph (B).

(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirement is contributing to the achievement of the purposes of this title. The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph.

(4) No benefit shall be payable under this title, except as provided in section 1619 (or section 1616(c)(3)), with respect to an eligible individual or his eligible spouse who is an aged, blind, or disabled individual solely by application of section 1614(a)(3)(F) for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1614(a)(4)(D)(i).[15]

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[13] P.L. 94-566, § 502, amended clause (ii) in its entirety, effective October 20, 1976. For clause (ii) as it formerly read, see Vol. II, p. 1783.

[14] P.L. 94-566, § 505(a), added subparagraph (C), effective October 1, 1976.

See P.L. 96-598, § 4, with respect to the Boundary County Restorium, Bonner's Ferry, Idaho, in Vol. II, p. 1745.

[15] P.L. 96-265, § 303(c)(2), added paragraph (4), effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

Suspension of Payments to Individuals Who Are Outside the United States

(f) Notwithstanding any other provision of this title, no individual shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this title with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

Certain Individuals Deemed To Meet Resources Test [16]

(g) In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under title I, X, XIV, or XVI,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in sections 1611(a)(1)(B) and 1611(a)(2)(B) during any period that the resources of such individual or individuals [16A] and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

Certain Individuals Deemed To Meet Income Test [17]

(h) In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under title X or XVI,

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

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[16] P.L. 93-233, § 18(d), amended subsection (g) in its entirety, effective December 31, 1973. For subsection (g) as it formerly read, see Vol. II, p. 1759.

[16A] As in original. Should be "individual".

[17] P.L. 93-233, § 18(e), amended subsection (h) in its entirety, effective December 31, 1973. For subsection (h) as it formerly read, see Vol. II, p. 1759.

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1612 without application of this subsection.

INCOME

Meaning of Income

SEC. 1612. [42 U.S.C. 1382a] (a) For purposes of this title, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 203(f)(5)(C);

(B) net earnings from self-employment, as defined in section 211 (without the application of the second and third sentences following subsection (a)(11)[18], and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) any refund of Federal income taxes made by reason of section 43 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit); and [19]

(D) [20] remuneration received for services performed in a sheltered workshop or work activities center; and

(2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i)[21] in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1611 shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph,[22] (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that

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[18] P.L. 96-473, § 6(g)(1), deleted "(10)" and substituted "(11)", effective October 19, 1980.

[19] P.L. 96-222, § 101(a)(2)(B), added this subparagraph (C), effective with respect to payments for months beginning after December 31, 1979. As in original.

[20] P.L. 96-265, § 202(a)(2), added this subparagraph (C), effective only with respect to remuneration received in months after September 1980.

P.L. 96-473, § 6(g)(2)(B), redesignated this subparagraph (C) as subparagraph (D), effective October 19, 1980.

[21] P.L. 93-484, § 4(1), inserted "(i)", effective January 1, 1974.

[22] See P.L. 95-557, § 410(c), with respect to individuals receiving services under the Congregate Housing Services Act, in Vol. II, p. 1698.

it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization [23], and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth [24] month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief Act of 1974 [25], and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe [26];

(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(C) prizes and awards;

(D) the proceeds of any life insurance policy to the extent that they exceed the amount expended by the beneficiary for purposes of the insured individual's last illness and burial or $1,500, whichever is less;

(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and

(F) rents, dividends, interest, and royalties.

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[23] P.L. 93-484, § 4(2), added clause (ii), effective January 1, 1974.

[24] P.L. 94-455, § 2125, deleted "fifth" and substituted "seventeenth", effective October 4, 1976.

[25] See P.L. 93-288, §§ 102 and 404, in Vol. II, p. 1489.

[26] P.L. 94-331, § 4(a), added clause (iii), effective with respect to catastrophes which occur on or after June 1, 1976, and before December 31, 1976.

P.L. 95-171, § 7(a), amended that effective date by deleting "and before December 31, 1976", effective January 1, 1978.

Exclusions From Income [27]

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

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[27] See P.L. 79-396 (National School Lunch Act), § 12(e), with respect to exclusion from income and resources of assistance to children, in Vol. II, p. 1526.

See P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing, in Vol. II, p. 1527.

See P.L. 88-525 (Food Stamp Act of 1977), § 8, with respect to exclusion from income and resources of the value of food stamps, in Vol. II, p. 1422.

See P.L. 89-73 (Older Americans Act of 1965), § 709, with respect to the exclusion from income applicable before October 1, 1978, to the cost of a "nutrition project" which supplied at least one hot meal a day to eligible recipients, and § 211(b), with respect to an exclusion applicable to other project costs, in Vol. II, p. 1574.

See P.L. 89-642 (Child Nutrition Act of 1966), § 11(b), with respect to the exclusion from income and resources of the value of assistance to children, in Vol. II, p. 1576.

See P.L. 90-575 (Higher Education Amendments of 1968), § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), § 216, with respect to exclusion from income of payments under that act, in Vol. II, p. 1597.

See P.L. 92-203 (Alaska Native Claims Settlement Act), § 29(b), with respect to exclusion from income and resources of income and other benefits, in determining eligibility for food stamps, in Vol. II, p. 1457.

See P.L. 92-254, § 4, with respect to exclusion from income and resources of funds distributed per capita to Blackfeet and Gros Ventre Tribes of Indians, in Vol. II, p. 1601.

See P.L. 93-112 (Rehabilitation Act of 1973), § 613(c), with respect to the conditional exclusion from income of wages, allowances, transportation reimbursement, and attendant care provided to handicapped individuals under community service employment pilot programs, in Vol. II, p. 1489.

See P.L. 93-113 (Domestic Volunteer Service Act of 1973), § 404(g), with respect to the exclusion from income and resources of payments to volunteers, in Vol. II, p. 1610.

See P.L. 93-134, § 7, with respect to exclusion from income and resources of funds distributed per capita or held in trust for Indians in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims, in Vol. II, p. 1611.

See P.L. 93-203 (Comprehensive Employment and Training Act of 1973), § 446, with respect to exclusion from income and resources of earnings and allowances received by youth under Youth Employment Demonstration Programs in determining eligibility of youth's family for, and the amount of, benefits, in Vol. II, p. 1612.

See P.L. 93-288 (Disaster Relief Act of 1974), §§ 102, 404, and 407, with respect to exclusion from income and resources of certain types of assistance (see §§ 1612(a)(2)(A) and (b)(11) and 1613(a)(6) of this title), in Vol. II, p. 1489.

See P.L. 93-531, § 22, with respect to an exclusion from income and resources of settlement of Hopi and Navajo Tribes rights, in Vol. II, p. 1626.

See P.L. 94-114, § 6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians, in Vol. II, p. 1654.

See P.L. 94-164 (Revenue Adjustment Act of 1975), § 2(d), with respect to exclusion from income and resources of certain Federal income tax credits/refunds before January 1, 1980, in Vol. II, p. 1654.

See P.L. 94-189, § 6, with respect to exclusion from income and resources of funds distributed or held in trust for Sac and Fox Tribe Indians, in Vol. II, p. 1657.

See P.L. 94-375 (Housing Authorization Act of 1976), § 2(h), with respect to exclusion from income and resources of the value of assistance paid with respect to a dwelling unit, for purposes of this title of this act; see:

P.L. 94-375, § 2(h), in Vol. II, p. 1660;
P.L. 89-117 (Housing and Urban Development Act of 1965), § 101, in Vol. II, p. 1574;
P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(B), (C), and (E), in Vol. II, p. 1527;
P.L. 75-412 (United States Housing Act of 1937), §§ 8(j) and 9(b), in Vol. II, p. 1522; and
P.L. 73-479 (National Housing Act), §§ 231(a), (b), and (f), 235(a), 236(a) and (j)(6), and 237(a) and (b), in Vol. II, p. 1520.

See P.L. 94-540, § 6, with respect to exclusion from income and resources of funds distributed per capita or held in trust for the Grand River Band of Ottawa Indians in Indian Claims Commission Docket numbered 40-K, in Vol. II, p. 1668.

See P.L. 95-171, § 10(d), with respect to exclusion from income of certain income from putting sitters in touch with individuals who wished to employ them, in Vol. II, p. 1679.

See P.L. 95-433, § 2, with respect to exclusion from income and resources of judgment funds awarded by Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation, and to the Apache Tribe of the Mescalero Reservation, in Vol. II, p. 1695.

See P.L. 95-498, § 6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico, in Vol. II, p. 1697.

See P.L. 95-499, § 6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico, in Vol. II, p. 1697.

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(1) subject to limitations (as to amount or otherwise) prescribed by the Secretary, if such individual is a child who is, as determined by the Secretary, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2)(A)[28] the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual;

(B) monthly[29] (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;[28] [30]

(3)(A) the total unearned income of such individual (and such spouse, if any) in a calendar quarter which, as determined in accordance with criteria prescribed by the Secretary, is received too infrequently or irregularly to be included, if such income so received does not exceed $60 in such quarter, and (B) the total earned income of such individual (and such spouse, if any) in a calendar quarter which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $30 in such quarter;

(4)(A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section 1002 or 1602) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section

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See P.L. 95-557 (Housing and Community Development Amendments of 1978), § 410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the Housing Act of 1959 (See P.L. 86-372, § 202, in Vol. II, p. 1543), in Vol. II, p. 1698.

See P.L. 96-126, Community Services Administration, with respect to exclusion from income and resources of a one-time energy payment, in Vol. II, p. 1725.

See P.L. 96-223 (Crude Oil Windfall Profit Tax Act of 1980), § 308(h) with respect to authority for the Social Security Administration to make low-income energy assistance payments on behalf of a State, and § 313(c)(1) with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1734.

[28] P.L. 94-202, § 9, added "(A)" and subparagraph (B), effective January 2, 1976.

[29] P.L. 96-473, § 6(g)(3)(A), deleted "Monthly" and substituted "monthly", effective October 19, 1980.

[30] P.L. 96-473, § 6(g)(3)(B), deleted the period and substituted the semicolon, effective October 19, 1980.

1402 or 1602) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, (ii) such additional amounts of earned income of such individual (for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility), if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv)[31] such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan, or

(C) if such individual (or such spouse) has attained age 65 and is not included under subparagraph (A) or (B), the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof;

(5) any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased by such individual (or such spouse);

(6) assistance, furnished to or on behalf of such individual (and spouse), which[32] is based on need and furnished by any State or political subdivision of a State;

(7) any portion of any grant, scholarship, or fellowship received for use in paying the cost of tuition and fees at any

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[31] P.L. 96-265, § 302(b), deleted "plus one-half of the remainder thereof, and (ii)", and inserted "(ii) such additional amounts of earned income of such individual (for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility), if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv)", effective with respect to expenses incurred on or after December 1, 1980.

[32] P.L. 94-566, § 505(b), deleted "assistance described in section 1616(a) which" and substituted "assistance, furnished to or on behalf of such individual (and spouse), which", effective October 1, 1976.

educational (including technical or vocational education) institution;

(8) home produce of such individual (or spouse) utilized by the household for its own consumption;

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency;

(11) assistance received under the Disaster Relief Act of 1974 [33] or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President; [34] and

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period).[35]

RESOURCES

Exclusions From Resources [36]

SEC. 1613. [42 U.S.C. 1382b] (a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

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[33] See P.L. 93-288, §§ 102, 404, and 407, in Vol. II, p. 1489.

[34] P.L. 94-331, § 2(a), added paragraph (11), effective with respect to catastrophes which occur on or after June 1, 1976, and before December 31, 1976.

P.L. 95-171, § 6, amended that effective date by deleting "and before December 31, 1976", effective January 1, 1978.

[35] P.L. 95-171, § 8(a)(3), added paragraph (12), effective (a) July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976, and (b) January 1, 1978, with respect to catastrophes which occurred on or after December 31, 1976.

[36] See P.L. 79-396 (National School Lunch Act), § 12(e), with respect to exclusion from income and resources of assistance to children, in Vol. II, p. 1526.

See P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing, in Vol. II, p. 1527.

See P.L. 88-525 (Food Stamp Act of 1977), § 8, with respect to exclusion from income and resources of the value of food stamps, in Vol. II, p. 1422.

See P.L. 89-642 (Child Nutrition Act of 1966), § 11(b), with respect to the exclusion from income and resources of the value of assistance to children, in Vol. II, p. 1576.

See P.L. 90-575 (Higher Education Amendments of 1968), § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 92-203 (Alaska Native Claims Settlement Act), § 29(b), with respect to exclusion from income and resources of income and other benefits, in determining eligibility for food stamps, in Vol. II, p. 1457.

See P.L. 92-254, § 4, with respect to exclusion from income and resources of funds distributed per capita to Blackfeet and Gros Ventre Tribes of Indians, in Vol. II, p. 1601.

See P.L. 93-113 (Domestic Volunteer Service Act of 1973), § 404(g), with respect to exclusion from income and resources of payments to volunteers, in Vol. II, p. 1610.

See P.L. 93-134, § 7, with respect to exclusion from income and resources of funds distributed per capita or held in trust for Indians in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims, in Vol. II, p. 1611.

See P.L. 93-203 (Comprehensive Employment and Training Act of 1973), § 446, with respect to exclusion from income and resources of earnings and allowances received by youth under Youth Employment Demonstration Programs in determining eligibility of the youth's family for, and the amount of, benefits, in Vol. II, p. 1612.

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(1) the home (including the land that appertains thereto);[37]

(2) household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Secretary determines to be reasonable;

(3) other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 7(h) and section 8(c) of the Alaska Native Claims Settlement Act[38]; and

(6) assistance referred to in section 1612(b)(11)[39] for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this

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See P.L. 93-288 (Disaster Relief Act of 1974), §§ 102, 404, and 407, with respect to exclusion from income and resources of certain types of assistance (see §§ 1612(a)(2)(A) and (b)(11) and 1613(a)(6) of this title), in Vol. II, p. 1489.

See P.L. 93-531, § 22, with respect to an exclusion from income and resources of settlement of Hopi and Navajo Tribes rights, in Vol. II, p. 1626.

See P.L. 94-114, § 6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians, in Vol. II, p. 1654.

See P.L. 94-164 (Revenue Adjustment Act of 1975), § 2(d), with respect to exclusion from income and resources of certain Federal income tax credits/refunds before January 1, 1980, in Vol. II, p. 1654.

See P.L. 94-189, § 6, with respect to exclusion from income and resources of funds distributed or held in trust for Sac and Fox Tribe, in Vol. II, p. 1657.

See P.L. 94-375 (Housing Authorization Act of 1976), § 2(h), with respect to exclusion from income and resources of the value of assistance paid with respect to a dwelling unit, for purposes of this title of this act; see:

P.L. 94-375, § 2(h), in Vol. II, p. 1660;

P.L. 89-117 (Housing and Urban Development Act of 1965), § 101, in Vol. II, p. 1574;

P.L. 81-171 (Housing Act of 1949), § 521(a)(1)(B), (C) and (E), in Vol. II, p. 1527;

P.L. 75-412 (United States Housing Act of 1937), §§ 8(j) and 9(b), in Vol. II, p. 1522; and

P.L. 73-479 (National Housing Act), §§ 231(a), (b), and (f), 235(a), 236(a) and (j)(6), and 237(a) and (b), in Vol. II, p. 1520.

See P.L. 94-540, § 6, with respect to exclusion from income and resources of funds distributed per capita or held in trust for the Grand River Band of Ottawa Indians in Indian Claims Commission Docket numbered 40-K, in Vol. II, p. 1668.

See P.L. 95-433, § 2, with respect to exclusion from income and resources of judgment funds awarded by Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation, and to the Apache Tribe of the Mescalero Reservation, in Vol. II, p. 1695.

See P.L. 95-498, § 6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico, in Vol. II, p. 1697.

See P.L. 95-499, § 6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico, in Vol. II, p. 1697.

See P.L. 96-126, Community Services Administration, with respect to exclusion from income and resources of a one-time energy payment, in Vol. II, p. 1725.

See P.L. 96-223 (Crude Oil Windfall Profit Tax Act of 1980), § 308(h) with respect to authority for the Social Security Administration to make low-income energy assistance payments on behalf of a State, and § 313(c)(1) with respect to the exclusion from income and resources of fuel-assistance payments and allowances under that law, in Vol. II, p. 1734.

[37] P.L. 94-569, § 5, deleted ", to the extent that its value does not exceed such amount as the Secretary determines to be reasonable", effective October 20, 1976.

[38] See P.L. 92-203, §§ 7(h) and 8(c), in Vol. II, p. 1456.

[39] See 93-288 (Disaster Relief Act of 1974), §§ 102, 404, and 407, in Vol. II, p. 1489.

paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1612(b)(12).[40]

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

Disposition of Resources

(b) The Secretary shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

Disposal of Resources for Less Than Fair Market Value [41]

(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a)) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24 months if such individual or eligible spouse gave away or sold such resource or interest at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.

(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

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[40] P.L. 95-171, § 9(a)(3), added paragraph (6), effective (a) July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976, and (b) January 1, 1978, with respect to catastrophes which occurred on or after December 1, 1976. [Executed as if December 31, 1976.]

[41] P.L. 96-611, § 5(a), added subsection (c), effective with respect to applications for benefits under title XVI of the Social Security Act filed on or after March 1, 1981.

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act [42]).

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).[43]

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able

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[42] See P.L. 82-414, §§ 203(a)(7) and 212(d)(5), in Vol. II, p. 1284.

[43] P.L. 93-233, § 9(1), effective December 31, 1973, deleted "An individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973, so long as he is continuously disabled as so defined.".

to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.[44] Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria, except for purposes of subparagraph (F) or [45] paragraph (4), shall be found not to be disabled.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.[46]

(F) For purposes of this title, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1611(e)(4), nonetheless be considered (except for purposes of section 1631(a)(5)) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.[47]

(4)(A) For purposes of this title, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term "services" means activity which is performed for remuneration or gain or is deter-

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[44] P.L. 96-265, § 302(a)(2), added the preceding sentence, effective with respect to expenses incurred on or after December 1, 1980.

[45] P.L. 96-265, § 303(c)(1)(B), added "subparagraph (F) or", effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

[46] P.L. 93-233, § 9(2), added subparagraph (E), effective December 31, 1973.

See P.L. 93-256, § 1, with respect to certain individuals considered to be disabled, in Vol. II, p. 1620.

See P.L. 94-566, § 501(b), with respect to publication of criteria, in Vol. II, p. 1672.

[47] P.L. 96-265, § 303(c)(1)(A), added subparagraph (F), effective December 1, 1980, with respect to any individual whose disability has not been determined to have ceased prior to that date.

mined by the Secretary to be of a type normally performed for remuneration or gain.

(B) The term "period of trial work", with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this title on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this title on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).

Eligible Spouse

(b) For purposes of this title, the term "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an "eligible individual" within the meaning of section 1611(a).

Definition of Child

(c) For purposes of this title, the term "child" means an individual who is neither married nor (as determined by the Secretary) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Secretary) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.

Determination of Marital Relationships

(d) In determining whether two individuals are husband and wife for purposes of this title, appropriate State law shall be applied; except that—

(1) if a man and woman have been determined to be husband and wife under section 216(h)(1) for purposes of title II they shall be considered (from and after the date of such determination or the date of their application for benefits under this title, whichever is later) to be husband and wife for purposes of this title, or

(2) if a man and woman are found to be holding themselves out to the community in which they reside as husband and

wife, they shall be so considered for purposes of this title notwithstanding any other provision of this section.

United States

(e) For purposes of this title, the term "United States", when used in a geographical sense, means the 50 States and the District of Columbia.

Income and Resources of Individuals Other Than Eligible Individuals and Eligible Spouses

(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

(2) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18 [48], such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

(3) For purposes of determining eligibility for and the amount of benefits for any individual who is an alien, such individual's income and resources shall be deemed to include the income and resources of his sponsor and such sponsor's spouse (if such alien has a sponsor) as provided in section 1621. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.[49]

REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS [50]

SEC. 1615. [42 U.S.C. 1382d] (a) In the case of any blind or disabled individual who—

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this title,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under the Vocational

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[48] P.L. 96-265, § 203(a), deleted "21" and substituted "18", effective October 1, 1980; except in the case of any child who, in September 1980, was 18 or over and received a supplemental security income benefit for that month, during any period for which such benefit would be greater without the application of this change in age.

[49] P.L. 96-265, § 504(a), added paragraph (3), effective with respect to individuals applying for supplemental security income benefits under title XVI of the Act for the first time after September 30, 1980.

[50] P.L. 94-566, § 501(a), amended § 1615 in its entirety, effective October 20, 1976. For § 1615 as it formerly read, see Vol. II, p. 1783.

See P.L. 95-602, § 401(c), with respect to a study of research and demonstration projects, in Vol. II, p. 1700.

With respect to references to the Vocational Rehabilitation Act, see, instead, Rehabilitation Act of 1973 (P.L. 93-112), in Vol. II, p. 1475. The Vocational Rehabilitation Act (P.L. 78-113; approved July 6, 1943; 57 Stat. 374) was repealed by P.L. 93-112, § 500(a).

Rehabilitation Act [51], or, in the case of any such individual who has not attained age 16, to the appropriate State agency administering the State plan under subsection (b) of this section, and (except in such cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

(b)(1) The Secretary shall by regulation prescribe criteria for approval of State plans for—

(A) assuring appropriate counseling for disabled children referred pursuant to subsection (a) and their families,

(B) establishment of individual service plans for such disabled children, and prompt referral to appropriate medical, educational, and social services,

(C) monitoring to assure adherence to such service plans, and

(D) provision for such disabled children who are 6 years of age and under, or who have never attended public school and require preparation to take advantage of public educational services, of medical, social, developmental, and rehabilitative services, in cases where such services reasonably promise to enhance the child's ability to benefit from subsequent education or training, or otherwise to enhance his opportunities for self-sufficiency or self-support as an adult.

(2) Such criteria shall include—

(A) administration—

(i) by the agency administering the State plan for crippled children's services under title V of this Act, or

(ii) by another agency which administers programs providing services to disabled children and which the Governor of the State concerned has determined is capable of administering the State plan described in the first sentence of this subsection in a more efficient and effective manner than the agency described in clause (i) (with the reasons for such determination being set forth in the State plan described in the first sentence of this subsection);

(B) coordination with other agencies serving disabled children; and

(C) establishment of an identifiable unit within such agency which shall be responsible for carrying out the plan.

(c) Every individual age 16 or over with respect to whom the Secretary is required to make provision for referral under subsection (a) shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under the Vocational Rehabilitation Act [51]; and no such individual shall be an eligible individual or eligible spouse for purposes of this title if he refuses without good cause to accept services for which he is referred under subsection (a).

(d) The Secretary is authorized to pay to the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act [51] the costs incurred under such plan in the provision

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[51] See Rehabilitation Act of 1973 (P.L. 93-112), in Vol. II, p. 1475. The Vocational Rehabilitation Act (P.L. 78-113; approved July 6, 1943; 57 Stat. 374) was repealed by P.L. 93-112, § 500(a).

of rehabilitation services to individuals referred for such services pursuant to subsection (a).

(e)[53] (1) The Secretary shall, subject to the limitations imposed by paragraphs (2) and (3), pay to the State agency administering a State plan of a State under subsection (b) of this section, the costs incurred each fiscal year which begins after September 30, 1976, and ends prior to October 1, 1982[54], in carrying out the State plan approved pursuant to such subsection (b).

(2)(A) Of the funds paid by the Secretary with respect to costs, incurred in any State, to which paragraph (1) applies, not more than 10 per centum thereof shall be paid with respect to costs incurred with respect to activities described in subsection (b)(1)(A), (B), and (C).

(B) Whenever there are provided pursuant to this section to any child services of a type which is appropriate for children who are not blind or disabled, there shall be disregarded for purposes of computing any payment with respect thereto under this subsection, so much of the costs of such services as would have been incurred if the child involved had not been blind or disabled.

(C) The total amount payable under this subsection for any fiscal year, with respect to services provided in any State, shall be reduced by the amount by which the sum of the public funds expended (as determined by the Secretary) from non-Federal sources for services of the type involved for such fiscal year is less than the sum of such funds expended from such sources for services of such type for the fiscal year ending June 30, 1976.

(3) No payment under this subsection with respect to costs incurred in providing services in any State for any fiscal year shall exceed an amount which bears the same ratio to $30,000,000 as the under age 7 population of such State (and for purposes of this section the District of Columbia shall be regarded as a State) bears to the under age 7 population of the fifty States and the District of Columbia. The Secretary shall promulgate the limitation applicable to each State for each fiscal year under this paragraph on the basis of the most recent satisfactory data available from the Department of Commerce not later than 90 nor earlier than 270 days before the beginning of such year.

OPTIONAL STATE SUPPLEMENTATION[55]

SEC. 1616. [42 U.S.C. 1382e] (a) Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this title or who would but for their income be eligible to receive benefits under this title, as assistance based on need in supplementation of such benefits (as determined by the Secretary), shall be excluded under section 1612(b)(6) in determining the income of such individuals for purposes of this title and the Secretary and such State may enter

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[53] P.L. 96-272, § 304, redesignated subsection (c) which followed subsection (d) in P.L. 94-566, § 501(a), as subsection (e), effective June 17, 1980.

[54] P.L. 96-272, § 304, deleted "October 1, 1979" and inserted "October 1, 1982", effective June 17, 1980.

[55] See P.L. 93-233, § 8(d), with respect to cash payments in lieu of food stamps to SSI recipients and § 11(c) regarding projects involving Federal financial participation, in Vol. II, p. 1613.

See P.L. 95-216, § 405, regarding reimbursement for erroneous State supplementary payments, in Vol. II, p. 1503.

into an agreement which satisfies subsection (b) under which the Secretary will, on behalf of such State (or subdivision) make such supplementary payments to all such individuals.[56]

(b) Any agreement between the Secretary and a State entered into under subsection (a) shall provide—

(1) that such payments will be made (subject to subsection (c)) to all individuals residing in such State (or subdivision) who are receiving benefits under this title, and

(2) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Secretary finds necessary (subject to subsection (c)) to achieve efficient and effective administration of both the program which he conducts under this title and the optional State supplementation.

(c)(1) Any State (or political subdivision) making supplementary payments described in subsection (a) may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Secretary under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(2) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a), may disregard amounts of earned and unearned income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and shall include a provision specifying the amount of any such income that will be disregarded, if any.

(3) Any State (or political subdivision) making supplementary payments described in subsection (a) shall have the option of making such payments to individuals who receive benefits under this title under the provisions of section 1619, or who would be eligible to receive such benefits but for their income.[57]

(d) Any State which has entered into an agreement with the Secretary under this section which provides that the Secretary will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this title (or who would but for their income be eligible to receive such benefits), shall, at such times and in such installments as may be agreed upon between the Secretary and such State, pay to the Secretary an amount equal to the expenditures made by the Secretary as such supplementary payments.[58]

(e)(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such stand-

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[56] See P.L. 93-335, § 2(b)(2), regarding benefit decreases, in Vol. II, p. 1621.

[57] P.L. 96-265, § 201(b)(1), added paragraph (3), effective January 1, 1981, but in effect only for a period of three years after that date.

See P.L. 96-265, § 201(e), with respect to the maintenance of separate accounts, in Vol. II, p. 1505.

[58] See P.L. 92-603, § 401, as amended, with respect to limitation on fiscal liability of States for optional State supplementation, in Vol. II, p. 1466.

ards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

(2) Each State shall annually make available for public review, as a part of the services program planning procedures established pursuant to section 2004 of this Act, a summary of the standards established pursuant to paragraph (1), and shall make available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authority responsible for their enforcement.

(3) Each State shall certify annually to the Secretary that it is in compliance with the requirements of this subsection.

(4) Payments made under this title with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a)) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedial care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.[59] [60] [61]

COST-OF-LIVING ADJUSTMENTS IN BENEFITS [62]

SEC. 1617. [42 U.S.C. 1382f] Whenever benefit amounts under title II are increased by any percentage effective with any month as a result of determination made under section 215(i), each of the dollar amounts in effect for such month under subsections (a)(1)(A), (a)(2)(A), (b)(1), (b)(2) of section 1611, and subsection (a)(1)(A) of section 211 of Public Law 93-66 [63], as specified in such subsections or as previously increased under this section, shall be increased by the same percentage (and rounded, when not a multiple of $1.20, to the next higher multiple of $1.20), effective with respect to benefits for months after such month; and such dollar amounts as so increased shall be published in the Federal Register together with, and at the same time as, the material required by section 215(i)(2)(D) to be published therein by reason of such determination.

OPERATION OF STATE SUPPLEMENTATION PROGRAMS [64]

SEC. 1618. [42 U.S.C. 1382g] (a) In order for any State which makes supplementary payments of the type described in section 1616(a) (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66 [65]), on or after June 30, 1977, to be eligible for payments pursuant to title XIX with respect to expenditures for any calendar quarter which begins—

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[59] P.L. 93-233, § 14, added subsection (e), effective December 31, 1973.

[60] P.L. 94-566, § 505(c), repealed subsection (e), effective October 1, 1976. For subsection (e) as it formerly read, see Vol. II, p. 1784.

[61] P.L. 94-566, § 505(d), added the present subsection (e), effective October 1, 1977.

[62] P.L. 93-368, § 6(b), added § 1617, effective August 7, 1974.

[63] See P.L. 93-66, § 211, in Vol. II, p. 1469.

[64] P.L. 94-585, § 2(a), added § 1618, effective with respect to benefits payable for months after June 1977.

[65] See P.L. 93-66, § 212, in Vol. II, p. 1470.

to expenditures for any calendar quarter which begins—

(1) after June 30, 1977, or, if later,

(2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Secretary whereby the State will—

(3) continue to make such supplementary payments, and

(4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

(b) The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) with respect to the levels of its supplementary payments for a particular month or months if the State's expenditures for such payments in the twelve-month period (within which such month or months fall) beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1617 are not less than its expenditures for such payments in the preceding twelve-month period.

BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT [66]

SEC. 1619. [42 U.S.C. 1382h] (a) Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1611(b) or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1611(e)(4) or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1611(b)(1) (or, in the case of an individual who has an eligible spouse, under section 1611(b)(2)), and for purposes of titles XIX and XX of this Act shall be considered a disabled individual receiving supplemental security income benefits under this title, for so long as the Secretary determines that—

(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this title; and

(2) the income of such individual, other than income excluded pursuant to section 1612(b), is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments).

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[66] P.L. 96-265, § 201(a), added § 1619, effective January 1, 1981, but in effect only for a period of three years after that date.

See P.L. 96-265, § 201(e), with respect to the maintenance of separate accounts, in Vol. II, p. 1505.

(b) For purposes of titles XIX and XX, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received—

(i) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability,

(ii) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93-66 [67] on such basis,

(iii) a payment of monthly benefits under subsection (a), or

(iv) a supplementary payment under section 1616(c)(3),

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—

(1) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under this title;

(2) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments);

(3) the termination of eligibility for benefits under title XIX or XX would seriously inhibit his ability to continue his employment; and

(4) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this title and titles XIX and XX which would be available to him in the absence of such earnings.

MEDICAL AND SOCIAL SERVICES FOR CERTAIN HANDICAPPED PERSONS [68]

SEC. 1620. [42 U.S.C. 1382i] (a) There are authorized to be appropriated such sums as may be necessary to establish and carry out a 3-year Federal-State pilot program to provide medical and social services for certain handicapped individuals in accordance with this section.

(b)(1) The total sum of $18,000,000 shall be allotted to the States for such program by the Secretary, during the period beginning September 1, 1981, and ending September 30, 1984, as follows:

(A) The total sum of $6,000,000 shall be allotted to the States for the fiscal year ending September 30, 1982 (which for purposes of this section shall include the month of September 1981).

(B) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotment made under subparagraph (A), shall be allotted to the States for the fiscal year ending September 30, 1983.

(C) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1984.

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[67] See P.L. 93-66, § 212, in Vol. II, p. 1470.
[68] P.L. 96-265, § 201(c), added § 1620, effective June 9, 1980.

(2) The allotment to each State from the total sum allotted under paragraph (1) for any fiscal year shall bear the same ratio to such total sum as the number of individuals in such State who are over age 17 and under age 65 and are receiving supplemental security income benefits as disabled individuals in such year (as determined by the Secretary on the basis of the most recent data available) bears to the total number of such individuals in all the States. For purposes of the preceding sentence, the term "supplemental security income benefits" includes payments made pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93-66 [69].

(3) At the beginning of each fiscal year in which the pilot program under this section is in effect, each State that does not intend to use the allotment to which it is entitled for such year (or any allotment which was made to it for a prior fiscal year), or that does not intend to use the full amount of any such allotment, shall certify to the Secretary the amount of such allotment which it does not intend to use, and the State's allotment for the fiscal year (or years) involved shall thereupon be reduced by the amount so certified.

(4) The portion of the total amount available for allotment for any particular fiscal year under paragraph (1) which is not allotted to States for that year by reason of paragraph (3) (plus the amount of any reductions made at the beginning of such year in the allotments of States for prior fiscal years under paragraph (3)) shall be reallocated in such manner as the Secretary may determine to be appropriate to States which need, and will use, additional assistance in providing services to severely handicapped individuals in that particular year under their approved plans. Any amount reallocated to a State under this paragraph for use in a particular fiscal year shall be treated for purposes of this section as increasing such State's allotment for that year by an equivalent amount.

(c) In order to participate in the pilot program and be eligible to receive payments for any period under subsection (d), a State (during such period) must have a plan, approved by the Secretary as meeting the requirements of this section, which provides medical and social services for severely handicapped individuals whose earnings are above the level which ordinarily demonstrates an ability to engage in substantial gainful activity and who are not receiving benefits under section 1611 or 1619 or assistance under a State plan approved under section 1902, and which—

(1) declares the intent of the State to participate in the pilot program;

(2) designates an appropriate State agency to administer or supervise the administration of the program in the State;

(3) describes the criteria to be applied by the State in determining the eligibility of any individual for assistance under the plan and in any event requires a determination by the State agency to the effect that (A) such individual's ability to continue his employment would be significantly inhibited without such assistance and (B) such individual's earnings are not sufficient to allow him to provide for himself a reasonable

[69] See P.L. 93-66, § 212, in Vol. II, p. 1470.

equivalent of the cash and other benefits that would be available to him under this title and titles XIX and XX in the absence of those earnings;

(4) describes the process by which the eligibility of individuals for such assistance is to be determined (and such process may not involve the performance of functions by any State agency or entity which is engaged in making determinations of disability for purposes of disability insurance or supplemental security income benefits except when the use of a different agency or entity to perform those functions would not be feasible);

(5) describes the medical and social services to be provided under the plan;

(6) describes the manner in which the medical and social services involved are to be provided and, if they are not to be provided through the State's medical assistance and social services programs under titles XIX and XX (with the Federal payments being made under subsection (d) of this section rather than under those titles), specifies the particular mechanisms and procedures to be used in providing such services; and

(7) contains such other provisions as the Secretary may find to be necessary or appropriate to meet the requirements of this section or otherwise carry out its purpose.

The plan under this section may be developed and submitted as a separate State plan, or may be submitted in the form of an amendment to the State's plan under section 2003(d)(1).

(d)(1) From its allotment under subsection (b) for any fiscal year (and any amounts remaining available from allotments made to it for prior fiscal years), the Secretary shall from time to time pay to each State which has a plan approved under subsection (c) an amount equal to 75 per centum of the total sum expended under such plan (including the cost of administration of such plan) in providing medical and social services to severely handicapped individuals who are eligible for such services under the plan.

(2) The method of computing and making payments under this section shall be as follows:

(A) The Secretary shall, prior to each period for which a payment is to be made to a State, estimate the amount to be paid to the State for such period under the provisions of this section.

(B) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such period under this section.

(e) Within nine months after the date of the enactment of this section [70], the Secretary shall prescribe and publish such regulations as may be necessary or appropriate to carry out the pilot program and otherwise implement this section.

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[70] June 9, 1980 is date of enactment (P.L. 96-265, 94 Stat. 446, 448).

(f) Each State participating in the pilot program under this section shall from time to time report to the Secretary on the operation and results of such program in that State, with particular emphasis upon the work incentive effects of the program. On or before October 1, 1983, the Secretary shall submit to the Congress a report on the program, incorporating the information contained in the State reports along with his findings and recommendations.

ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIENS [71]

SEC. 1621. [42 U.S.C. 1382j] (a) For purposes of determining eligibility for and the amount of benefits under this title for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c)) for a period of three years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(b)(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(A) The total yearly rate of earned and unearned income (as determined under section 1612(a)) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such year.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the maximum amount of the Federal benefit under this title for such year which would be payable to an eligible individual who has no other income and who does not have an eligible spouse (as determined under section 1611(b)(1)), plus (ii) one-half of the amount determined under clause (i) multiplied by the number of individuals who are dependents of such sponsor (or such sponsor's spouse if such spouse is living with the sponsor), other than such alien and such alien's spouse.

(C) The amount of income which shall be deemed to be unearned income of such alien shall be at a yearly rate equal to the amount determined under subparagraph (B). The period for determination of such amount shall be the same as the period for determination of benefits under section 1611(c).

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(A) The total amount of the resources (as determined under section 1613) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) $1,500 in the case of a

[71] P.L. 96-265, § 504(b), added § 1621, effective with respect to individuals applying for supplemental security income benefits under title XVI of the Act for the first time after September 30, 1980.

sponsor who has no spouse with whom he is living, or (ii) $2,250 in the case of a sponsor who has a spouse with whom he is living.

(C) The resources of such sponsor (and spouse) as determined under subparagraphs (A) and (B) shall be deemed to be resources of such alien in addition to any resources of such alien.

(c) In determining the amount of income of an alien during the period of three years after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1612(a)(2)(A)(i) shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b)) be considered to be income of such alien under section 1612(a)(2)(A).

(d)(1) Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this title, be required to provide to the Secretary such information and documentation with respect to his sponsor as may be necessary in order for the Secretary to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the Secretary such information and documentation as the Secretary may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Secretary shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Secretary, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(e) Any sponsor of an alien, and such alien, shall be jointly and severably [71A] liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Secretary or recovered in accordance with section 1631(b) shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this Act.

(f)(1) The provisions of this section shall not apply with respect to any individual who is an "aged, blind, or disabled individual" for purposes of this title by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)), from and after the onset of the impairment, if such blindness or disability commenced after the date of such individual's admission into the United States for permanent residence.

[71A] As in original.

(2) The provisions of this section shall not apply with respect to any alien who is—

(A) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 203(a)(7) of the Immigration and Nationality Act [72];

(B) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 207(c)(1) of such Act [73];

(C) paroled into the United States as a refugee under section 212(d)(5) of such Act [74]; or

(D) granted political asylum by the Attorney General.

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES [75]

Payment of Benefits

SEC. 1631. [42 U.S.C. 1383] (a)(1) Benefits under this title shall be paid at such time or times and in such installments as will best effectuate the purposes of this title, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).[76]

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this title shall apply.

(4) The Secretary—

(A) may make to any individual initially applying for benefits under this title who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100; and

(B) may pay benefits under this title to an individual applying for such benefits on the basis of disability or blindness [77] for a period not exceeding 3 months prior to the determination of such individual's disability or blindness [77], if such individual is presumptively disabled or blind [77] and is determined to be

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[72] See P.L. 82-414, § 203(a)(7), in Vol. II, p. 1284.
[73] See P.L. 82-414, § 207(c)(1), in Vol. II, p. 1284.
[74] See P.L. 82-414, § 212(d)(5), in Vol. II, p. 1284.
[75] See P.L. 90-321 (Consumer Credit Protection Act), § 913(2), regarding electronic fund transfers, in Vol. II, p. 1585.
[76] See P.L. 95-608, § 201(b), with respect to Indian child welfare, in Vol. II, p. 1705.
[77] P.L. 94-569, § 4(a), inserted "or blindness" and "or blind", effective with respect to months after November 1976.

otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) solely because such individual is determined not to be disabled [78] or blind.[77] [79]

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this title, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973 [80], and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.[81]

Overpayments and Underpayments

(b)(1) [82] Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this title.

(2) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1954 (relating to advance payment of

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[78] P.L. 93-233, § 18(g), inserted "solely because such individual is determined not to be disabled", effective January 1, 1974.

[79] See P.L. 93-256, § 1, regarding certain presumptively disabled individuals, in Vol. II, p. 1620.

[80] See P.L. 93-112, in Vol. II, p. 1475.

[81] P.L. 96-265, § 301(b), added paragraph (6), effective December 1, 1980, with respect to individuals whose disability has not been determined to have ceased prior to that date.

[82] P.L. 96-265, § 501(c)(1), inserted "(1)", effective in the case of payments of monthly insurance benefits under title II of the Act entitlement for which is determined on or after July 1, 1981.

P.L. 96-222, § 101(a)(2)(C), added "(1)", effective with respect to remuneration paid after June 30, 1979.

P.L. 96-473, § 6(h)(1), deleted "(1) (1)" and substituted "(1)", effective October 19, 1980.

earned income credit) exceed the amount of such individual's earned income credit allowable under section 43 of such Code for such year, so that such individual is liable under section 43(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this title so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.[83]

(3) For payments for which adjustments are made by reason of a retroactive payment of benefits under title II, see section 1127.[84]

Hearings and Review [85] [86] [87]

(c)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based.[88] The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

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[83] P.L. 96-222, § 101(a)(2)(C), added this paragraph (2), effective with respect to remuneration paid after June 30, 1979.

[84] P.L. 96-265, § 501(c)(2), added this paragraph (2), effective in the case of payments of monthly insurance benefits under title II of the Act entitlement for which is determined on or after July 1, 1981.

P.L. 96-473, § 6(h)(2), redesignated this second paragraph (2) as paragraph (3), effective October 19, 1980.

[85] P.L. 94-202, § 1, amended subsection (c) in its entirety, effective (a) January 2, 1976, or (b) to the extent that it changes the period within which hearings must be requested, this amendment shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, on or after January 2, 1976. For subsection (c) as it formerly read, see Vol. II, p. 1775.

[86] See P.L. 94-202, § 3, with respect to hearing examiners, in Vol. II, p. 1657.

[87] See P.L. 95-216, § 371, with respect to hearing examiners, in Vol. II, p. 1502.

[88] P.L. 96-265, § 305(b), added the preceding sentence, effective with respect to decisions made on or after July 1, 1981.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1614(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205.

Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a), (d), (e), and (f)[89] of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

(2)[90] The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this title, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

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[89] As in original [P.L. 92-603, § 301, approved October 30, 1972]. P.L. 91-452, § 236, repealed § 205(f) of this Act effective December 14, 1970; therefore, § 1631(d)(1) should not refer to § 205(f).

[90] P.L. 94-202, § 2, deleted paragraph (2) and redesignated paragraph (3) as paragraph (2), effective January 2, 1976. For paragraph (2) as it formerly read, see Vol. II, p. 1776.

Applications and Furnishing of Information [91]

(e)(1)(A) The Secretary shall, subject to subparagraph (B), prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this title.

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this title will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.[92]

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this title as required by the Secretary under paragraph (1), or delay by any individual in submitting a report as so required, the Secretary (in addition to taking any other action he may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this title by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

Furnishing of Information by Other Agencies

(f) The head of any Federal agency shall provide such information as the Secretary needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.[92]

Reimbursement to States for Interim Assistance Payments [93]

(g)(1) Notwithstanding subsection (d)(1) and subsection (b) as it relates to the payment of less than the correct amount of benefits, the Secretary may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Secretary and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for inter-

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[91] See P.L. 88-525 (Food Stamp Act of 1977), § 11(i) and (j), regarding inquiry into the need for food stamps, providing individuals applying for aid to families with dependent children or supplemental security income shall be permitted to apply, at the same office, for participation in the food stamp program, and providing that they may have their eligibility for food stamps determined on the basis of information furnished at those offices, effective October 1, 1977, in Vol. II, p. 1426.

[92] See P.L. 95-630, §§ 1101-1121, with respect to an individual's right to financial privacy, in Vol. II, p. 1712.

[93] P.L. 93-368, § 5, added subsection (g), effective August 7, 1974.

im assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this title, and any State supplementary payments under section 1616 or under section 212 of Public Law 93-66 [94] which the Secretary makes on behalf of a State (or political subdivision thereof), that the Secretary has determined to be due with respect to the individual at the time the Secretary makes the first payment of benefits. A cash advance made pursuant to subsection (a)(4)(A) shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs during the period, beginning with the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Secretary which shall provide—

(A) that if the Secretary makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Secretary finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this title, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) shall not be applicable to any disagreement concerning payment by the Secretary to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

[(6) Repealed.[95]]

Payment of Certain Travel Expenses [96]

(h) The Secretary shall pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Secretary in connection with disability determinations under this title, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1614(e)) to attend

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[94] See P.L. 93-66, § 212, in Vol. II, p. 1470.

[95] P.L. 94-365, § 1, effective July 14, 1976. For paragraph (6) as it formerly read, see Vol. II, p. 1781.

[96] P.L. 96-265, § 310(b), added subsection (h), effective June 9, 1980.

reconsideration interviews and proceedings before administrative law judges with respect to any determination under this title. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations.

PENALTIES FOR FRAUD

SEC. 1632. [42 U.S.C. 1383a] Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this title,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

ADMINISTRATION

SEC. 1633. [42 U.S.C. 1383b] (a)[97] Subject to subsection (b), the[98] Secretary may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1614(a) (2) and (3) in the same manner and subject to the same conditions as provided with respect to disability determinations under section 221) as may be necessary or appropriate to carry out his functions under this title.

(b) In determining, for purposes of this title, whether an individual is blind, there shall be an examination of such individual by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.[99]

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[97] P.L. 93-66, § 214(1), added "(a)", effective July 9, 1973.

[98] P.L. 93-66, § 214(2), deleted "The" and substituted "Subject to subsection (b), the", effective July 9, 1973.

[99] P.L. 93-66, § 214(3), added subsection (b), effective July 9, 1973.

DETERMINATIONS OF MEDICAID ELIGIBILITY [100]

SEC. 1634. [42 U.S.C. 1383c] The Secretary may enter into an agreement with any State which wishes to do so under which he will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under title XIX. Any such agreement shall provide for payments by the State, for use by the Secretary in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this title, the Secretary shall include only those costs which are additional to the costs incurred in carrying out this title.

[100] See P.L. 94-566, § 503, regarding preservation of Medicaid eligibility, in Vol. II, p. 1672.

TITLE XVII—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION [1]

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AUTHORIZATION OF APPROPRIATIONS

SECTION 1701. [42 U.S.C. 1391] For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. There are also authorized to be appropriated, for assisting such States in initiating the implementation and carrying out of planning and other steps to combat mental retardation, $2,750,000 for the fiscal year ending June 30, 1966, and $2,750,000 for the fiscal year ending June 30, 1967.

GRANTS TO STATES

SEC. 1702. [42 U.S.C. 1392] The sums appropriated pursuant to the first sentence of section 1701 shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and

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[1] Title XVII of the Social Security Act is administered by the Office of Human Development Services, Rehabilitation Services Administration, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). Title XVII appears in the United States Code as §§ 1391–1394, subchapter XVII, chapter 7, Title 42.

No regulations have been promulgated for title XVII.

Title XVII was added to the Social Security Act by P.L. 88-156 (77 Stat. 273), § 5, effective October 24, 1963; however, it now is inactive.

[2] This table of contents does not appear in the law.

its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation.

APPLICATIONS

SEC. 1703. [42 U.S.C. 1393] In order to be eligible for a grant under section 1702, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying out the purposes of this title;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this title;

(4) provides for submission of a final report of the activities of the State agency in carrying out the purposes of this title, and for submission of such other reports, in such form and containing such information, as the Secretary [3] may from time to time find necessary for carrying out the purposes of this title and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and

(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of an accounting for funds paid to the State under this title.

PAYMENTS

SEC. 1704. [42 U.S.C. 1394] Payment of grants under this title may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

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[3] P.L. 88-156, § 6, provides that the term "Secretary" means the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services].

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED[1]

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[1] Title XVIII of the Social Security Act is administered by the Health Care Financing Administration, Department of Health and Human Services (formerly Department of Health, Education, and Welfare).

Title XVIII appears in the United States Code as §§ 1395–1395ss, subchapter XVIII, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title XVIII are contained in chapter IV, title 42, and in subtitle A, title 45, Code of Federal Regulations.

See P.L. 62-265 (Public Health Service Act), § 304(d)(4), with respect to study of cost of diseases and adverse effects on humans which are environmentally related, in Vol. II, p. 1228.

See P.L. 62-265 (Public Health Service Act), § 328(d), with respect to report to Congress by Comptroller General on hospital-affiliated primary care centers, in Vol. II, p. 1231.

See P.L. 88-352 (Civil Rights Act of 1964) for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 89-73 (Older Americans Act of 1965), § 203, with respect to Federal agency consultation, in Vol. II, p. 1570.

See P.L. 90-248 (Social Security Amendments of 1967), § 234(c), with respect to nursing homes which do not meet all requirements of the State for licensure, in Vol. II, p. 1444.

See P.L. 93-233, § 16, with respect to the basis of medicare payments for services provided by agencies and providers, in Vol. II, p. 1617.

See P.L. 94-103 (Developmentally Disabled Assistance and Bill of Rights Act), § 204, with respect to a study and report to Congress on standards and quality assurance mechanisms applicable to residential facilities and community agencies, in Vol. II, p. 1652.

See P.L. 95-142 (Medicare-Medicaid Anti-Fraud and Abuse Amendments), § 18, with respect to report on home health and other in-home services, in Vol. II, p. 1677.

See P.L. 95-250, § 201(19), with respect to trust fund contributions, and § 204(b)(4), with respect to title XVII ineligibility, in Vol. II, p. 1687. See P.L. 96-265 (Social Security Disability Amendments of 1980), § 505(a)(3), with respect to experiments, demonstration projects, and required reports to Congress, in Vol. II, p. 1506.

See P.L. 96-605, § 401, with respect to certain social security tax waiver exemptions, in Vol. II, p. 1745.

[2] This table of contents does not appear in the law.

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PROHIBITION AGAINST ANY FEDERAL INTERFERENCE

SEC. 1801. [42 U.S.C. 1395] Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

FREE CHOICE BY PATIENT GUARANTEED

SEC. 1802. [42 U.S.C. 1395a] Any individual entitled to insurance benefits under this title may obtain health services from any institution, agency, or person qualified to participate under this title if such institution, agency, or person undertakes to provide him such services.

OPTION TO INDIVIDUALS TO OBTAIN OTHER HEALTH INSURANCE PROTECTION

SEC. 1803. [42 U.S.C. 1395b] Nothing contained in this title shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED [3]

DESCRIPTION OF PROGRAM

SEC. 1811. [42 U.S.C. 1395c] The insurance program for which entitlement is established by sections 226 and 226A [4] provides basic

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[3] See 38 U.S.C. 5053, with respect to provision of hospital care or medical services by the Veterans Administration, in Vol. II, p. 1220.

[4] P.L. 95-292, § 4(a)(1), deleted "section 226" and substituted "sections 226 and 226A", effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that the amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

protection against the costs of hospital, related post-hospital, and home health [5] services in accordance with this part for (1) individuals who are age 65 or over and are eligible for [6] retirement benefits under title II of this Act or under the railroad retirement system,[7] (2) individuals under age 65 who have been entitled for not less than 24 [8] months to benefits under title II of this Act or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease [9].

SCOPE OF BENEFITS

SEC. 1812. [42 U.S.C. 1395d] (a) The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1814(d)(2) to him (subject to the provisions of this part) for—

(1) inpatient hospital services for up to 150 days during any spell of illness minus one day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services for up to 100 days during any spell of illness;

(3) home health services; and [10]

(4) alcohol detoxification facility services.[11]

(b) Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c)) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

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[5] P.L. 96-499, § 930(a), deleted "and related post-hospital" and substituted ", related post-hospital, and home health", effective with respect to services furnished on or after July 1, 1981.

[6] P.L. 96-473, § 2(b), deleted "entitled to" and substituted "eligible for", effective January 1, 1981.

[7] P.L. 95-292, § 4(a)(2), deleted "and" and substituted ",", effective as shown in footnote 4 of this title.

[8] P.L. 96-265, § 103(a)(2), deleted "consecutive", effective with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after December 1, 1980.

[9] P.L. 95-292, § 4(a)(3), added ", and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease", effective as shown in footnote 4 of this title.

[10] P.L. 96-499, § 930(b), amended paragraph (3) in its entirety, effective with respect to services furnished on or after July 1, 1981. For paragraph (3) as it formerly read, see Vol. II, p. 1836.

[11] P.L. 96-499, § 931(a), added paragraph (4), effective April 1, 1981.

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

(c) If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3)).

[(d) Repealed.[12]]

(e) For purposes of subsections (b) and (c)[13], inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care[14] services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1814(a), made with respect to such services under this part.

(f) For definition of "spell of illness", and for definitions of other terms used in this part, see section 1861.

DEDUCTIBLES AND COINSURANCE

SEC. 1813. [42 U.S.C. 1395e] (a)(1) The amount payable for inpatient hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1812(a)(1) to have payment made on his behalf for inpatient hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such

[12] P.L. 96-499, § 930(c), repealed subsection (d), effective with respect to services furnished on or after July 1, 1981. For subsection (d) as it formerly read, see Vol. II, p. 1836.

[13] P.L. 96-499, § 930(d)(1), deleted "(b), (c), and (d)" and substituted "(b) and (c)", effective with respect to services furnished on or after July 1, 1981.

[14] P.L. 96-499, § 930(d)(2), deleted "post-hospital extended care services, and post-hospital home health" and substituted "and post-hospital extended care", effective with respect to services furnished on or after July 1, 1981.

individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2) The amount payable to any provider of services under this part for services furnished an individual during any spell of illness shall be further reduced by a deduction equal to the cost of the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to him as part of such services during such spell of illness.

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(b)(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) shall be $40 in the case of any spell of illness beginning before 1969.

(2) The Secretary shall, between July 1 and October 1 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) in the case of any spell of illness beginning during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $40 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1866, to individuals who are entitled to hospital insurance benefits under section 226, plus the amount which would have been so paid but for subsection (a)(1) of this section.

CONDITIONS OF AND LIMITATIONS ON PAYMENT FOR SERVICES

Requirement of Requests and Certifications

SEC. 1814. [42 U.S.C. 1395f] (a) Except as provided in subsections (d) and (g) and in section 1876, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1866 and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calen-

dar months of any calendar year to have been furnished in the succeeding calendar year) except that where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year;

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of inpatient tuberculosis hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and such treatment can or could reasonably be expected to (i) improve the condition for which such treatment is or was necessary or (ii) render the condition noncommunicable;

(C) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1861(e)) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(D) in the case of [15] home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needed skilled nursing care on an intermittent basis, or physical,

[15] P.L. 96-499, § 930(f)(1), deleted "post-hospital", effective with respect to services furnished on or after July 1, 1981.

occupational,[16] or speech therapy [17]; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician;

(E) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services; or [18]

(F) in the case of alcohol detoxification facility services, such services are required on an inpatient basis (based upon an examination by such certifying physician made prior to initiation of alcohol detoxification); [19]

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services and inpatient tuberculosis hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) in the case of inpatient tuberculosis hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to (A) improve his condition or (B) render it noncommunicable;

(6) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations,

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[16] P.L. 96-499, § 930(f)(2), inserted ", occupational,", effective with respect to services furnished on or after July 1, 1981.

[17] P.L. 96-499, § 930(f)(3), deleted ", for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1861(e)) or post-hospital extended care services", effective with respect to services furnished on or after July 1, 1981.

[18] P.L. 96-499, § 936(b), amended subparagraph (E) in its entirety, effective with respect to services provided on or after July 1, 1981. For subparagraph (E) as it formerly read, see Vol. II, p. 1836.

[19] P.L. 96-499, § 931(b), added subparagraph (F), effective April 1, 1981.

there was not in effect, at the time of admission of such individual to the hospital or skilled nursing facility, as the case may be, a decision under section 1866(d) (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility); and

(7) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1861(k)(4), including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C), (D), or (E) [20] of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractural [20A] relationship with, such home health agency from performing such certification and from establishing or reviewing such plan.[21]

Amount Paid to Providers

(b) The amount paid to any provider of services with respect to services for which payment may be made under this part shall, subject to the provisions of section 1813, be—

(1) except as provided in paragraph (3),[22] the lesser of (A) the reasonable cost of such services, as determined under section 1861(v) and as further limited by section 1881(b)(2)(B)[23], or (B) the customary charges with respect to such services;

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[20] P.L. 93-233, § 18(k)(2), deleted "or (D)" and substituted "(D), or (E)", effective with respect to admissions subject to the provisions of § 1814(a)(2) which occur after December 31, 1972.

[20A] As in original. Should be "contractual".

[21] P.L. 96-499, § 930(e), added the preceding sentence, effective with respect to services furnished on or after July 1, 1981.

[22] P.L. 96-499, § 903(a)(1), inserted "except as provided in paragraph (3),", effective December 5, 1980.

[23] P.L. 95-292, § 4(f), inserted "and as further limited by section 1881(b)(2)(B)", effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that the amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

(2) if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

(3) if some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 [24] or section 222 of the Social Security Amendments of 1972 [25], if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to such hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then the Secretary may provide for continuation of reimbursement to such hospitals under such system until the Secretary determines that—

(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

(B) the rate of increase for the previous three-year period in such hospitals in costs per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.[26]

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the Secretary determines that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred.[26A]

No Payments to Federal Providers of Services

(c) Subject to section 1880, no [27] payment may be made under this part (except under subsection (d) or subsection (h) [28]) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a

[24] See P.L. 90-248, § 402, in Vol. II, p. 1445.
[25] See P.L. 90-603, § 222, in Vol. II, p. 1462.
[26] P.L. 96-499, § 903(a)(4), added paragraph (3), effective December 5, 1980.
[26A] P.L. 96-499, § 903(a)(4), added the preceding sentence, effective December 5, 1980.
[27] P.L. 94-437, § 401(a), deleted "No" and substituted "Subject to section 1880, no", effective September 30, 1976.
[28] P.L. 95-142, § 23(a), added "or subsection (j)", effective with respect to inpatient hospital services furnished on and after July 1, 1974.
P.L. 96-499, § 941(b), deleted "(j)" and substituted "(h)", effective January 1, 1981.

community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

Payments for Emergency Hospital Services

(d)(1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year, by the hospital or under arrangements (as defined in section 1861(w)) with it, to an individual entitled to hospital insurance benefits under section 226 even though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1835(b) furnished during such year. Such payments shall be made only in the amounts provided under subsection (b) and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1866(a).

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 226 for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1813, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1861(v)(4)), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term "routine services" shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term "ancillary services" shall mean those special services for which charges are customarily made in addition to routine services.

Payment for Inpatient Hospital Services Prior to Notification of Noneligibility

(e) Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital, payment shall be made to such hospital

(unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1812 and if such hospital complies with the requirements of and regulations under this title with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or legal holiday) after the day on which such admission occurred.

Payment for Certain Inpatient Hospital Services Furnished Outside the United States

(f)(1) Payment shall be made for inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 226 by a hospital located outside the United States, or under arrangements (as defined in section 1861(w)) with it, if—

(A) such individual is a resident of the United States, and

(B) such hospital was closer to, or substantially more accessible from, the residence of such individual than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(2) Payment may also be made for emergency inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 226 by a hospital located outside the United States if—

(A) such individual was physically present—

(i) in a place within the United States; or

(ii) at a place within Canada while traveling without unreasonable delay by the most direct route (as determined by the Secretary) between Alaska and another State;

at the time the emergency which necessitated such inpatient hospital services occurred, and

(B) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(3) Payment shall be made in the amount provided under subsection (b) to any hospital for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual by the hospital or under arrangements (as defined in section 1861(w)) with it if (A) the Secretary would be required to make such payment if the hospital had an agreement in effect under this title and otherwise met the conditions of payment hereunder, (B) such hospital elects to claim such payment, and (C) such hospital agrees to comply, with respect to such services, with the provisions of section 1866(a).

(4) Payment for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual entitled to hospital insurance benefits under section 226 may be made on the basis of an itemized bill to such individual if (A) payment for such services cannot be made under paragraph (3) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and continuing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amount payable with respect to such services shall, subject to the provisions of section 1813, be equal to the amount which would be payable under subsection (d)(3).

Payment for Services of a Physician Rendered in a Teaching Hospital

(g) For purposes of services for which the reasonable cost thereof is determined under section 1861(v)(1)(D), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) such hospital has an agreement with the Secretary under section 1866, and

(2) the Secretary has received written assurances that (A) such payment will be used by such fund solely for the improvement of care of hospital patients or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged, provision will be made for return of any moneys incorrectly collected).

Payment for Certain Hospital Services Provided in Veterans' Administration Hospitals [29]

(h)(1) Payments shall also be made to any hospital operated by the Veterans' Administration for inpatient hospital services furnished in a calendar year by the hospital, or under arrangements (as defined in section 1861(w)) with it, to an individual entitled to hospital benefits under section 226 even though the hospital is a Federal provider of services if (A) the individual was not entitled to have the services furnished to him free of charge by the hospital, (B) the individual was admitted to the hospital in the reasonable belief on the part of the admitting authorities that the individual was a person who was entitled to have the services furnished to him free of charge, (C) the authorities of the hospital, in admitting the individual, and the individual, acted in good faith, and (D) the services were furnished during a period ending with the close of the day on which the authorities operating the hospital first became aware of the fact that the individual was not entitled to

[29] P.L. 95-142, § 23(b), added subsection (j), effective with respect to inpatient hospital services furnished on and after July 1, 1974. P.L. 96-499, § 941(a), deleted subsections (h) and (i) and redesignated subsection (j) as subsection (h), effective January 1, 1981. For subsections (h) and (i) as they formerly read, see Vol. II, p. 1836.

have the services furnished to him by the hospital free of charge, or (if later) ending with the first day on which it was medically feasible to remove the individual from the hospital by discharging him therefrom or transferring him to a hospital which has in effect an agreement under this title.

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Veterans' Administration for such services, or (if less) the reasonable costs for such services (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

PAYMENT TO PROVIDERS OF SERVICES

SEC. 1815. [42 U.S.C. 1395g] (a)[30] The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.[31]

(b) No payment shall be made to a provider of services which is a hospital for or with respect to services furnished by it for any period with respect to which it is deemed, under section 1861(w)(2), to have in effect an arrangement with a Professional Standards Review Organization for the conduct of utilization review activities by such organization unless such hospital has paid to such organization the amount due (as determined pursuant to such section) to such organization for the review activities conducted by it pursuant to such arrangements or such hospital has provided assurances satisfactory to the Secretary that such organization will promptly be paid the amount so due to it from the proceeds of the payment claimed by the hospital. Payment under this title for utilization review activities provided by a Professional Standards Review Organization pursuant to an arrangement or deemed arrangement with a hospital under section 1861(w)(2) shall be calculated without any requirement that the reasonable cost of such activities be apportioned among the patients of such hospital, if any, to whom such activities were not applicable.[30]

(c) No payment which may be made to a provider of services under this title for any service furnished to an individual shall be made to any other person under an assignment or power of attor-

[30] P.L. 94-182, § 112(a)(2), added "(a)" and subsection (b), effective with respect to utilization review activities conducted on and after February 1, 1976.

[31] See P.L. 96-499, § 959, with respect to temporary delay in periodic interim payments, in Vol. II, p. 1741.

ney; but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or [32] in connection with the billing or collection of payments due such provider under this title is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.[33]

USE OF PUBLIC AGENCIES OR PRIVATE ORGANIZATIONS TO FACILITATE PAYMENT TO PROVIDERS OF SERVICES

SEC. 1816. [42 U.S.C. 1395h] (a) If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (subject to the provisions of section 1878 and to such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers (and to providers assigned to such agency or organization under subsection (e))[34], and for the making of such payments by such agency or organization to such providers (and to providers assigned to such agency or organization under subsection (e))[34]. Such agreement may also include provision for the agency or organization to do all or any part of the following: (1) to provide consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as hospitals, extended care facilities, or home health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part; and (C) to perform such other functions as are necessary to carry out this subsection.

(b) The Secretary shall not enter into or renew an agreement with any agency or organization under this section unless—

(1) he finds—

(A) after applying the standards, criteria, and procedures developed under subsection (f), that to do so is consistent with the effective and efficient administration of this part, and

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[32] P.L. 96-473, § 6(i), deleted "on" and substituted "or", effective October 19, 1980.

[33] P.L. 95-142, § 2(a)(2), added subsection (c), effective with respect to care and services furnished on or after October 25, 1977.

[34] P.L. 95-142, § 14(a)(1), added "(and to providers assigned to such agency or organization under subsection (e))", effective October 25, 1977.

(B) that such agency or organization is willing and able to assist the providers to which payments are made through it under this part in the application of safeguards against unnecessary utilization of services furnished by them to individuals entitled to hospital insurance benefits under section 226, and the agreement provides for such assistance; and

(2) such agency or organization agrees—

(A) to furnish to the Secretary such of the information acquired by it in carrying out its agreement under this section, and

(B) to provide the Secretary with access to all such data, information, and claims processing operations,

as the Secretary may find necessary in performing his functions under this part.[35]

(c) An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a), and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement.

(d) If the nomination of an agency or organization as provided in this section is made by a group or association of providers of services, it shall not be binding on members of the group or association which notify the Secretary of their election to that effect. Any provider may, upon such notice as may be specified in the agreement under this section with an agency or organization, withdraw its nomination to receive payments through such agency or organization. Any provider which has withdrawn its nomination, and any provider which has not made a nomination, may elect to receive payments from any agency or organization which has entered into an agreement with the Secretary under this section if the Secretary and such agency or organization agree to it.

(e)(1) Notwithstanding subsections (a) and (d), the Secretary, after taking into consideration any preferences of providers of services, may assign or reassign any provider of services to any agency or organization which has entered into an agreement with him under this section, if he determines, after applying the standards, criteria, and procedures developed under subsection (f), that such assignment or reassignment would result in the more effective and efficient administration of this part.

(2) Notwithstanding subsections (a) and (d), the Secretary may (subject to the provisions of paragraph (4)) [36] designate a national or regional agency or organization which has entered into an agreement with him under this section to perform functions under the agreement with respect to a class of providers of services in the

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[35] P.L. 95-142, § 14(a)(2), amended subsection (b) in its entirety, effective with respect to agreements entered into or renewed on or after October 25, 1977; except that, to the extent that they require application of standards, criteria, and procedures developed under § 1816(f), they apply to the entering into, renewal, or termination of agreements on and after October 1, 1978. For subsection (b) as it formerly read, see Vol. II, p. 1790.

[36] P.L. 96-499, § 930(o)(1), inserted "(subject to the provisions of paragraph (4))", effective December 5, 1980.

Nation or region (as the case may be), if he determines, after applying the standards, criteria, and procedures developed under subsection (f), that such designation would result in more effective and efficient administration of this part.

(3)(A) Before the Secretary makes an assignment or reassignment under paragraph (1) of a provider of services to other than the agency or organization nominated by the provider, he shall furnish (i) the provider and such agency or organization with a full explanation of the reasons for his determination as to the efficiency and effectiveness of the agency or organization to perform the functions required under this part with respect to the provider, and (ii) such agency or organization with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code [37].

(B) Before the Secretary makes a designation under paragraph (2) with respect to a class of providers of services, he shall furnish (i) such providers and the agencies and organizations adversely affected by such designation with a full explanation of the reasons for his determination as to the efficiency and effectiveness of such agencies and organizations to perform the functions required under this part with respect to such providers, and (ii) the agencies and organizations adversely affected by such designation with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code [37 38].

(4) Notwithstanding subsections (a) and (d) and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1861(o)) in the region, except that in assigning such agencies to such designated regional agencies or organizations the Secretary shall assign a home health agency which is a subdivision of a hospital (and such agency and hospital are affiliated or under common control) only if, after applying such criteria relating to administrative efficiency and effectiveness as he shall promulgate, he determines that such assignment would result in the more effective and efficient administration of this title.[39]

(f) In order to determine whether the Secretary should enter into, renew, or terminate an agreement under this section with an agency or organization, whether the Secretary should assign or reassign a provider of services to an agency or organization, and whether the Secretary should designate an agency or organization to perform services with respect to a class of providers of services, the Secretary shall develop standards, criteria, and procedures to evaluate such agency's or organization's (1) overall performance of claims processing and other related functions required to be performed by such an agency or organization under an agreement entered into under this section, and (2) performance of such functions with respect to specific providers of services, and the Secretary shall establish, by regulation, standards and criteria with

[37] See 5 U.S.C. §§ 701–706, in Vol. II, p. 1118.
[38] P.L. 95–142, § 14(a)(5), added subsection (e), effective October 25, 1977.
[39] P.L. 96–499, § 930(o)(2), added paragraph (4), effective December 5, 1980.

respect to the efficient and effective administration of this part. No agency or organization shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the ground that the agency or organization serves only providers located in a single State.[40] [41]

(g) [42] An agreement with the Secretary under this section may be terminated—

(1) by the agency or organization which entered into such agreement at such time and upon such notice to the Secretary, to the public, and to the providers as may be provided in regulations, or

(2) by the Secretary at such time and upon such notice to the agency or organization, to the providers which have nominated it for purposes of this section, and to the public, as may be provided in regulations, but only if he finds, after applying the standards, criteria, and procedures developed under subsection (f) and [43] after reasonable notice and opportunity for hearing to the agency or organization, that (A) the agency or organization has failed substantially to carry out the agreement, or (B) the continuation of some or all of the functions provided for in the agreement with the agency or organization is disadvantageous or is inconsistent with the efficient administration of this part.

(h) [44] An agreement with an agency or organization under this section may require any of its officers or employees certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in carrying out the agreement, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(i) [44] (1) No individual designated pursuant to an agreement under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such agency or organization shall be liable to the United States for any payments referred to in paragraph (1) or (2).

FEDERAL HOSPITAL INSURANCE TRUST FUND [45]

SEC. 1817. [42 U.S.C. 1395i] (a) There is hereby created on the books of the Treasury of the United States a trust fund to be

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[40] P.L. 95-142, § 14(a)(5), added subsection (f), effective October 25, 1977.

[41] P.L. 95-142, § 14(b), effective October 25, 1977, specified that the Secretary of Health, Education, and Welfare shall develop the standards, criteria, and procedures described in subsection (f) not later than October 1, 1978.

[42] P.L. 95-142, § 14(a)(4), redesignated subsection (e) as subsection (g), effective October 25, 1977.

[43] P.L. 95-142, § 14(a)(3), added "after applying the standards, criteria, and procedures developed under subsection (f) and", effective with respect to entering into, renewal, or termination of agreements on and after October 1, 1978.

[44] P.L. 95-142, § 14(a)(4), redesignated subsections (f) and (g) as subsections (h) and (i), respectively, effective October 25, 1977.

[45] See P.L. 95-210, § 3, regarding demonstration projects for physician-directed clinics in urban medically underserved areas, in Vol. II, p. 1681.

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known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1954 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of self-employment established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.[46]

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration [47] shall serve as the Secretary of the Board

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See P.L. 89-97, § 103(c), for the transitional provision for uninsured individuals, in Vol. II, p. 1434.

[46] P.L. 94-274, § 201(12), provides that the period of July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of § 1817(a), effective April 21, 1976.

[47] P.L. 95-292, § 5, deleted "Commissioner of Social Security" and substituted "Administrator of the Health Care Financing Administration", effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that those amendments providing for the

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of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.[48]

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended,[49] are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may

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implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

[48] P.L. 94-274, § 204(7), effective April 21, 1976, provides that the period July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975, for purposes of § 1817(b).

[49] See text of Second Liberty Bond Act in 31 U.S.C. §§ 752-754, in Vol. II, p. 1195.

purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f)(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary of Health, Education, and Welfare shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(h) The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

(i) There are authorized to be made available for expenditure out of the Trust Fund such amounts as are required to pay travel

expenses, either on an actual cost or commuted basis, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 210(i)) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this title. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations.[50]

HOSPITAL INSURANCE BENEFITS FOR UNINSURED INDIVIDUALS NOT OTHERWISE ELIGIBLE

SEC. 1818. [42 U.S.C. 1395i-2] (a) Every individual who—

(1) has attained the age of 65,

(2) is enrolled under part B of this title,

(3) is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and

(4) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part.

(b) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(c) The provisions of section 1837 (except subsection (f) thereof), section 1838, subsection (c) of section 1839, and subsections (f) and (h) of section 1840 shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) on or before the last day of the seventh month after the month in which this section is enacted may enroll under this part and (if not already so enrolled) may also enroll under part B during an initial general enrollment period which shall begin on the first day of the second month which begins after the date on which this section is enacted and shall end on the last day of the tenth month after the month in which this Act is enacted [51];

(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after the month in which this section is enacted, the initial enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;

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[50] P.L. 96-265, § 310(c), added subsection (i), effective June 9, 1980.

[51] P.L. 92-603, § 202, enacted October 30, 1972, added § 1818 to the Social Security Act.

(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection, entitlement to benefits shall begin on—

(A) the first day of the second month after the month in which he enrolls,

(B) July 1, 1973, or

(C) the first day of the first month in which he meets the requirements of subsection (a),

whichever is the latest;

(4) termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed;

(5) an individual's entitlement under this section shall terminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 226 of this Act or section 103 of the Social Security Amendments of 1965 [52]; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement; and

(6) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this Act.

(d)(1) The monthly premium of each individual for each month in his coverage period before July 1974 shall be $33.

(2) The Secretary shall, during the last calendar quarter of each year, beginning in 1973, determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the 12-month period commencing July 1 of the next year. Such amount shall be equal to $33, multiplied by the ratio of (A) the inpatient hospital deductible for such next year, as promulgated under section 1813(b)(2), to (B) such deductible promulgated for 1973. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or if midway between multiples of $1 to the next higher multiple of $1.

(e) Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

(f) Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

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[52] See P.L. 89-97, § 103, approved July 30, 1965, in Vol. II, p. 1433.

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED [53]

ESTABLISHMENT OF SUPPLEMENTARY MEDICAL INSURANCE PROGRAM FOR THE AGED AND THE DISABLED

SEC. 1831. [42 U.S.C. 1395j] There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

SCOPE OF BENEFITS

SEC. 1832. [42 U.S.C. 1395k] (a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2) [54]; and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services [55];

(B) medical and other health services furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met [56], and [57]

(ii) services for which payment may be made pursuant to section 1835(b)(2); and

(C) outpatient physical therapy services, other than services to which the next to last sentence of section 1861(p) applies;

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[53] See P.L. 95-210, § 1(c), with respect to a study of feasibility and desirability of copayment for rural health clinic services, in Vol. II, p. 1680.

[54] P.L. 95-210, § 1(a)(1), deleted "paragraph (2)(B)" and substituted "subparagraphs (B) and (D) of paragraph (2)", effective with respect to services rendered on or after March 1, 1978.

[55] P.L. 96-499, § 930(g), deleted "for up to 100 visits during a calendar year", effective with respect to services furnished on or after July 1, 1981.

[56] P.L. 96-499, § 948(a)(2), deleted ",unless either clause (A) or (B) of paragraph (7) of such section is met" and substituted "where the conditions specified in paragraph (7) of such section are met", effective with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election under § 1861(b)(7)(A) of the Act (as administered in accordance with § 15 of P.L. 93-233) as of September 30, 1978, shall constitute such hospital's election under such section on and after October 1, 1978, until otherwise provided by the hospital.

[57] See P.L. 93-233, § 15(a)(2) and (b) with respect to the interpretation of paragraph (7) and § 15(b) with respect to the conduct of a study, in Vol. II, p. 1616.

(D) rural health clinic services; [58]

(E) comprehensive outpatient rehabilitation facility services; and [59]

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1833(i)(1)(A) and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept the amount determined under section 1833(i)(2)(A) as full payment for such services and to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all such services furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1833(i)(1)(B) and performed by a physician, described in section 1861(r)(1), in his office, if the Secretary has determined that—

(I) a Professional Standards Review Organization (designated, conditionally or otherwise, under part B of title XI of this Act) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician's performing such procedures in the physician's office,

(II) the particular physician involved has agreed to make available to such Organization such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the amount determined under section 1833(i)(2)(B) as full payment for such services and to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and furnished in connection with such surgical procedure to individuals enrolled under this part.[60]

(b) For definitions of "spell of illness", "medical and other health services", and other terms used in this part, see section 1861.

PAYMENT OF BENEFITS [61]

SEC. 1833. [42 U.S.C. 1395l] (a) Except as provided in section 1876, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance

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[58] P.L. 95-210, § 1(a)(2), added subparagraph (D), effective with respect to services rendered on or after March 1, 1978.

[59] P.L. 96-499, § 933(a), added subparagraph (E), effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[60] P.L. 96-499, § 934(a), added subparagraph (F), effective December 5, 1980.

[61] See P.L. 96-499, § 932(b), with respect to Secretary's report to Congress on preadmission diagnostic testing, in Vol. II, p. 1739.

Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1832(a)(1)—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b), (B) with respect to expenses incurred for radiological or pathological services for which payment may be made under this part, furnished to an inpatient of a hospital by a physician in the field of radiology or pathology who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842(b)(3)(B)(ii)) for all physicians' services furnished by him to hospital inpatients enrolled under this part [62], the amounts paid shall be equal to 100 percent of the reasonable charges for such services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1862(a)(4), the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) [63] of this section), (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1881,[64] (F) with respect to expenses incurred for physicians' services (furnished by a physician who has an agreement in effect with the Secretary by which the physician agrees to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all physicians' services which are preadmission diagnostic services furnished by the physician to individuals enrolled under this part) which are preadmission diagnostic services for which payment may be made under this part and which are furnished (i) in the outpatient department of a hospital within seven days of such individual's admission

[62] P.L. 96-499, § 943(a), inserted "who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842(b)(3)(B)(ii)) for all physicians' services furnished by him to hospital inpatients enrolled under this part", effective with respect to services furnished after June 1981.

[63] P.L. 96-499, § 918(a)(4), deleted "(g)" and substituted "(h)", effective December 5, 1980.

[64] P.L. 95-292, § 4(b), added subparagraph (E), effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

to the same hospital as an inpatient or, to the extent practicable as determined by regulations prescribed by the Secretary, to another hospital, or (ii) to the extent practicable as determined by regulations prescribed by the Secretary, in a physician's office within seven days of such individual's admission to a hospital as an inpatient, the amounts paid shall be equal to the reasonable charges for such services,[65] (G) with respect to expenses incurred for services described in subsection (i)(3) under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services,[66] and (H) with respect to items and services described in section 1861(s)(10), the amounts paid shall be 100 percent of the reasonable charges for such items and services,[67] and

(2) in the case of services described in section 1832(a)(2) (except those services described in subparagraphs (D), (E), and (F) of such section and in paragraph (5) of this subsection and unless otherwise specified in section 1881)—

(A) with respect to home health services and to items and services described in section 1861(s)(10) [68], the reasonable cost of such services, as determined under section 1861(v);

(B) with respect to other services (except those described in subparagraph (C) of this paragraph), the reasonable costs of such services, as so determined, less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such other services exceed 80 percent of such costs; and

(C) with respect to services described in the second sentence of section 1861(p), 80 percent of the reasonable charges for such services; [69]

(3) in the case of services described in subparagraphs (D) and (E) of section 1832(a)(2), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A), less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such services (other than for items and services described in section 1861(s)(10)) [70] exceed 80 percent of such costs; [69]

(4) in the case of facility services described in subparagraph (F) of section 1832(a)(2), the applicable amount described in paragraph (2) of section 1833(i); and [71]

(5) in the case of preadmission diagnostic services described in section 1861(s)(2)(C) which are furnished to an individual by

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[65] P.L. 96-499, § 932(a)(1)(B), added subparagraph (F), effective December 5, 1980.
[66] P.L. 96-499, § 934(d)(1), added subparagraph (G), effective December 5, 1980.
[67] P.L. 96-611, § 1(b)(1)(B), added subparagraph (H), effective with respect to services furnished on or after July 1, 1981.
[68] P.L. 96-611, § 1(b)(1)(C), inserted "and to items and services described in section 1861(s)(10)", effective with respect to services furnished on or after July 1, 1981.
[69] P.L. 96-499, § 942, amended this paragraph in its entirety, effective December 5, 1980. For this paragraph as it formerly read, see Vol. II, p. 1837.
[70] P.L. 96-611, § 1(b)(1)(D), inserted "(other than for items and services described in section 1861(s)(10))", effective with respect to services furnished on or after July 1, 1981.
[71] P.L. 96-499, § 942, added this paragraph, effective December 5, 1980.

the outpatient department of a hospital within 7 days of such individual's admission to the same hospital as an inpatient or (to the extent practicable as determined by regulations prescribed by the Secretary) to another hospital, the reasonable costs for such services.[71]

(b) Before applying subsection (a) with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) are determinable) shall be reduced by a deductible of $60, except that (1) the amount of the deductible for such calendar year as so determined shall first be reduced by the amount of any expenses incurred by such individual in the last three months of the preceding calendar year and applied toward such individual's deductible under this section for such preceding year, (2) such total amount shall not include expenses incurred (A)[72] for radiological or pathological services furnished to such individual as an inpatient of a hospital by a physician in the field of radiology or pathology who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842(b)(3)(B)(ii)) for all physicians' services furnished by him to hospital inpatients enrolled under this part[73], or (B) for items and services described in section 1861(s)(10)[72], (3) such deductible shall not apply with respect to home health services[74], and (4) such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(G) or under subsection (i)(2) or (i)(4)[75]. The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

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[72] P.L. 96-611, § 1(b)(2), added "(A)" and ", or (B) for items and services described in section 1861(s)(10)", effective on, and with respect to services furnished on or after, July 1, 1981.

[73] P.L. 96-499, § 943(a), added "who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842(b)(3)(B)(ii)) for all physicians' services furnished by him to hospital inpatients enrolled under this part", effective with respect to services furnished after June 1981.

[74] P.L. 96-499, § 930(h)(2), added paragraph (3), effective with respect to services furnished on or after July 1, 1981.

[75] P.L. 96-499, § 934(d)(3), added paragraph (4), effective December 5, 1980.

(c) Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) only whichever of the following amounts is the smaller:

(1) $312.50, or

(2) 62½ percent of such expenses.

(d) No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1813) to have payment made with respect to such services under part A.

(e) No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

(f)(1) In the case of durable medical equipment to be furnished an individual as described in section 1861(s)(6), the Secretary shall determine, on the basis of such medical and other evidence as he finds appropriate (including certification by the attending physician with respect to expected duration of need), whether the expected duration of the medical need for the equipment warrants a presumption that purchase of the equipment would be less costly or more practical than rental. If the Secretary determines that such a presumption does exist, he shall require that the equipment be purchased, on a lease-purchase basis or otherwise, and shall make payment in accordance with the lease-purchase agreement (or in a lump sum amount if the equipment is purchased other than on a lease-purchase basis); except that the Secretary may authorize the rental of the equipment notwithstanding such determination if he determines that the purchase of the equipment would be inconsistent with the purposes of this title or would create an undue financial hardship on the individual who will use it.

(2) With respect to purchases of used durable medical equipment, the Secretary may waive the 20 percent coinsurance amount applicable under subsection (a) whenever the purchase price of the used equipment is at least 25 percent less than the reasonable charge for comparable new equipment.

(3) For purposes of paragraph (1), the Secretary may, pursuant to agreements made with suppliers of durable medical equipment, establish reimbursement procedures which he finds to be equitable, economical, and feasible.

(4) The Secretary shall encourage suppliers of durable medical equipment to make their equipment available to individuals entitled to benefits under this title on a lease-purchase basis whenever possible.[76]

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[76] P.L. 95-142, § 16(a), amended subsection (f) in its entirety, effective with respect to durable medical equipment purchased or rented on or after October 1, 1977. For subsection (f) as it formerly read, see Vol. II, p. 1790.

(g) In the case of services described in the next to last sentence of section 1861(p), with respect to expenses incurred in any calendar year, no more than $500 [77] shall be considered as incurred expenses for purposes of subsections (a) and (b).

(h) With respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the Secretary is authorized to establish a payment rate which is acceptable to the laboratory and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such a rate.[78]

(i)(1) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations—

(A) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (meeting the standards specified under section 1832(a)(2)(F)(i)) or hospital outpatient department, and

(B) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in a physician's office.

(2)(A) The amount of payment to be made for facility services furnished in connection with a surgical procedure specified pursuant to paragraph (1)(A) and furnished to an individual in an ambulatory surgical center described in such paragraph shall be equal to a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account the costs incurred by such centers, or classes of centers, generally in providing services furnished in connection with the performance of such procedure, and

(ii) takes such costs into account in such a manner as will assure that the performance of the procedure in such a center will result in substantially less amounts paid under this title than would have been paid if the procedure had been performed on an inpatient basis in a hospital.

Each amount so established shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(B) The amount of payment to be made under this part for facility services furnished, in connection with a surgical procedure specified pursuant to paragraph (1)(B), in a physician's office shall be equal to a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

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[77] P.L. 96-499, § 935(a), deleted "$100" and substituted "$500", effective with respect to expenses incurred in calendar years beginning with calendar year 1982.

[78] P.L. 92-603, § 279(b), added this second subsection (g), effective October 30, 1972.
P.L. 96-473, § 6(j), redesignated this subsection (g) as subsection (h), effective October 19, 1980.

(i) takes into account additional costs, not usually included in the professional fee, incurred by physicians in securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and

(ii) takes such items into account in such a manner which will assure that the performance of such procedure in the physician's office will result in substantially less amounts paid under this title than would have been paid if the services had been furnished on an inpatient basis in a hospital.

Each amount so established shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(3) In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician's office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(G) if the physician accepts an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for such services.

(4)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the facility services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.[79]

[SEC. 1834. Repealed.[80]]

PROCEDURE FOR PAYMENT OF CLAIMS OF PROVIDERS OF SERVICES

SEC. 1835. [42 U.S.C. 1395n] (a) Except as provided in subsections (b), (c), and (e), payment for services described in section 1832(a)(2) furnished an individual may be made only to providers of services which are eligible therefor under section 1866(a), and only if—

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[79] P.L. 96-499, § 934(b), added subsection (i), effective December 5, 1980.

[80] P.L. 96-499, § 930(i), repealed § 1834, effective with respect to services furnished on or after July 1, 1981. For § 1834 as it formerly read, see Vol. II, p. 1837.

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needed skilled nursing care on an intermittent basis, or physical, occupational,[81] or speech therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services except services described in subparagraphs (B), (C), and (D) of section 1861(s)(2), such services are or were medically required; and [81A]

(C) in the case of outpatient physical therapy services, (i) such services are or were required because the individual needed physical therapy services, (ii) a plan for furnishing such services has been established, and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and [81A]

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such services [82] and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; [82A]

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation serv-

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[81] P.L. 96-499, § 930(j), added ", occupational,", effective with respect to services furnished on or after July 1, 1981.

[81A] As in original. There should be no "and" at the end of subparagraphs (B) and (C).

[82] P.L. 96-499, § 944(a), added "by a physician or by the speech pathologist providing such services", effective with respect to plans for furnishing services established on or after January 1, 1981.

[82A] As in original; "and" should be added at the end of subparagraph (D).

ices, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and [82B] [83]

For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractural [83A] relationship with, such home health agency from performing such certification and from establishing or reviewing such plan.[84]

(b)(1) Payment may also be made to any hospital for services described in section 1861(s) furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1814(d)(1)(C) with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1833(a)(2) and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1866(a).

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1814(d)(1)(C), to claim such payments and (B) such individual files application (submitted within such time and in such form and

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[82B] As in original; "; and" should be replaced by a period.

[83] P.L. 96-499, § 935(b), added subparagraph (E), effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[83A] As in original. Should be "contractual".

[84] P.L. 96-499, § 930(e), added the preceding sentence, effective with respect to services furnished on or after July 1, 1981.

manner, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1833, be equal to 80 percent of the hospital's reasonable charges for such services.

(c) Notwithstanding the provisions of this section and sections 1832, 1833, and 1866(a)(1)(A), a hospital may, subject to such limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1861(s) and furnished to him by such hospital as an outpatient, but only if such charges for such services do not exceed the applicable supplementary medical insurance deductible, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1833(a)(1). Payments under this title to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1833(a)(2).

(d) Subject to section 1880, no [85] payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

(e) For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1861(b) or for which entitlement exists by reason of clause (II) of section 1832(a)(2)(B)(i), and (2) for which the reasonable cost thereof is determined under section 1861(v)(1)(D), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) [85A] such hospital has an agreement with the Secretary under section 1866, and

(2) [85A] the Secretary has received written assurances that [85B] such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (B) [85B] the individuals who were furnished such services or any other person will not be charged for such services (or if charged provision will be made for return for any moneys incorrectly collected).

ELIGIBLE INDIVIDUALS

SEC. 1836. [42 U.S.C. 1395o] Every individual who—

(1) is entitled to hospital insurance benefits under part A, or

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[85] P.L. 94-437, § 401(a), deleted "No" and substituted "Subject to section 1880, no", effective September 30, 1976.

[85A] As in original.

[85B] As in original. Should insert "(A)" or delete "(B)".

(2) has attained age 65 and is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part,

is eligible to enroll in the insurance program established by this part.

ENROLLMENT PERIODS

SEC. 1837. [42 U.S.C. 1395p] (a) An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

[(b) Repealed.[86]]

(c) In the case of individuals who first satisfy paragraph (1) or (2) of section 1836 before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month[87] which begins after the date of enactment of this title[87] and shall end on May 31, 1966. For purposes of this subsection and subsection (d), an individual who has attained age 65 and who satisfies paragraph (1) of section 1836 but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A.

(d) In the case of an individual who first satisfies paragraph (1) or (2) of section 1836 on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1838 as though he had attained such age at that time).

(e) There shall be a general enrollment period which is any period after the period described in subsection (d).[88]

(f) Any individual—

(1) who is eligible under section 1836 to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and

(2) whose initial enrollment period under subsection (d) begins after March 31, 1973, and

(3) who is residing in the United States, exclusive of Puerto Rico,

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[86] P.L. 96-499, § 945(a), repealed subsection (b), effective with respect to enrollments occurring on or after April 1, 1981. For subsection (b) as it formerly read, see Vol. II, p. 1837.

[87] September 1, 1965; July 30, 1965, is the date of enactment of P.L. 89-97 (79 Stat. 286) which added title XVIII to the Social Security Act.

[88] P.L. 96-499, § 945(b)(1), amended subsection (e) in its entirety, effective with respect to enrollments occurring on or after April 1, 1981. For subsection (e) as it formerly read, see Vol. II, p. 1837.

shall be deemed to have enrolled in the medical insurance program established by this part.

(g) All of the provisions of this section shall apply to individuals satisfying subsection (f), except that—

(1) in the case of an individual who satisfies subsection (f) by reason of entitlement to disability insurance benefits described in section 226(a)(2)(B), his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th [89] month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1839(e)) and upon attainment of age 65;

(2)(A) in the case of an individual who is entitled to monthly benefits under section 202 or 223 on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 202 during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 202 on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the month in which the individual files an application establishing such entitlement [90].

(h) In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A pursuant to section 1818 is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

COVERAGE PERIOD [91]

SEC. 1838. [42 U.S.C. 1395q] (a) The period during which an individual is entitled to benefits under the insurance program es-

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[89] P.L. 96–265, § 103(a)(3), deleted "consecutive", effective with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after December 1, 1980.

[90] P.L. 96–499, § 945(b)(2), deleted "earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)" and substituted "month in which the individual files an application establishing such entitlement", effective with respect to enrollments occurring on or after April 1, 1981.

[91] See P.L. 96–499, § 947(e), with respect to shortened part B termination period for individuals whose premiums medicaid has ceased to pay, in Vol. II, p. 1740.

tablished by this part (hereinafter referred to as his "coverage period") shall begin on whichever of the following is the latest:

(1) July 1, 1966 [91A] or (in the case of a disabled individual who has not attained age 65) July 1, 1973; or

(2)(A) in the case of an individual who enrolls pursuant to subsection (d) of section 1837 before the month in which he first satisfies paragraph (1) or (2) of section 1836, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraph, the first day of the month following the month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies such paragraph, the first day of the second month following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraph, the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1837, the first day of the third month [92] following the month in which he so enrolls; or

(3)(A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period, the first day of the month in which he first meets the applicable requirements of section 1836 or July 1, 1973, whichever is later, or

(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period, as prescribed under subparagraphs (B), (C), (D), and (E) of paragraph (2) of this subsection.

(b) An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1843(e)) [93] take effect at the close of the calendar quarter following the calendar quarter in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

[91A] As in original. Should be comma after "1966".

[92] P.L. 96-499, § 945(c)(1), deleted "July 1" and substituted "first day of the third month", effective with respect to enrollments occurring on or after April 1, 1981.

[93] P.L. 96-499, § 947(b), added "(except as otherwise provided in section 1843(e))", effective with respect to notices filed after March 1981.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1837(f) files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective and such notice shall not be considered a disenrollment for the purposes of section 1837(b). Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1837(f) files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the calendar quarter following the calendar quarter in which the notice is filed.

(c) In the case of an individual satisfying paragraph (1) of section 1836 whose entitlement to hospital insurance benefits under part A is based on a disability rather than on his having attained the age of 65, his coverage period (and his enrollment under this part) shall be terminated as of the close of the last month for which he is entitled to hospital insurance benefits.

(d) No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period.

AMOUNTS OF PREMIUMS

SEC. 1839. [42 U.S.C. 1395r] (a) The monthly premium of each individual enrolled under this part for each month before 1968 shall be $3.

(b)(1) The monthly premium of each individual enrolled under this part for each month after 1967 and before July 1, 1973, shall be the amount determined under paragraph (2).

(2) The Secretary shall, during December 1968 and of each year ending on or before December 31, 1971, determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the 12-month period commencing July 1 in each succeeding year. Such dollar amount shall be such amount as the Secretary estimates to be necessary so that the aggregate premiums for such 12-month period will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for such 12-month period. In estimating aggregate benefits payable for any period, the Secretary shall include an appropriate amount for a contingency margin. Whenever the Secretary, pursuant to the preceding sentence, promulgates the dollar amount which shall be applicable for premiums for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of premiums so promulgated.

(c)(1) The Secretary shall, during December of 1972 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the 12-month period

commencing July 1 in the succeeding year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such 12-month period with respect to those enrollees age 65 and over will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such 12-month period. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

(2) The monthly premium of each individual enrolled under this part for each month after June 1973 shall, except as provided in subsection (d), be the amount determined under paragraph (3).

(3) The Secretary shall, during December of 1972 and of each year thereafter, determine and promulgate the monthly premium applicable for the individuals enrolled under this part for the 12-month period commencing July 1 in the succeeding year. The monthly premium shall be equal to the smaller of—

(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that 12-month period, or

(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 215(a)(1), based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on May 1 of the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals on the following May 1.[94]

Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and over as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.

(4) The Secretary shall also, during December of 1972 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the 12-month period commencing July 1 in the succeeding year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such 12-month period with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be incurred in the Federal Supplementary Medical Insurance Trust Fund for such 12-month period with respect to such enrollees. In

[94] P.L. 95-216, § 205(e), amended subparagraph (B) in its entirety, effective with respect to monthly benefits payable for months after December 1978 and lump-sum death payments on deaths occurring after December 1978. For subparagraph (B) as it formerly read, see Vol. II, p. 1802.

calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(d) In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1837), the monthly premium determined under subsection (b) or (c) shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled [95]. Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have.

(e) If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(f) For purposes of subsection (d) (and section 1837(g)(1)), an individual's "continuous period of eligibility" is the period beginning with the first day on which he is eligible to enroll under section 1836 and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1836 and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate "continuous period of eligibility" with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

PAYMENT OF PREMIUMS

SEC. 1840. [42 U.S.C. 1395s] (a)(1) In the case of an individual who is entitled to monthly benefits under section 202 or 223, his monthly premiums under this part shall (except as provided in subsections (b)(1) and (c)) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Secretary shall by regulation prescribe.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such

[95] P.L. 96-499, § 945(c)(2), deleted "enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time" and substituted "reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled", effective with respect to enrollments occurring on or after April 1, 1981.

transfer relates from benefits under section 202 or 223 which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of Health, Education, and Welfare and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(b)(1) In the case of an individual who is entitled to receive for a month an annuity under the Railroad Retirement Act of 1974 [96] (whether or not such individual is also entitled for such month to a monthly insurance benefit under section 202), his monthly premiums under this part shall (except as provided in subsection (c)) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(c) If an individual to whom subsection (a) or (b) applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(d)(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5, United States Code [97], or any other law administered by the Civil Service Commission [97A] providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health, Education, and Welfare to the Civil Service Commission, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Civil Service Commission may determine. The Civil Service Commission shall furnish such information as the Secretary of Health, Education, and Welfare may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 of title 5, United States Code [98], may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under

[96] P.L. 93-445, § 306, deleted "or pension under the Railroad Retirement Act of 1937" and substituted "under the Railroad Retirement Act of 1974", effective January 1, 1975.

[97] See 5 U.S.C. §§ 8331-8345, in Vol. II, p. 1138.

[97A] Functions of the Civil Service Commission were transferred to the Director of the Office of Personnel Management under § 102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. § 1101 note), effective January 1, 1979.

[98] See 5 U.S.C. § 8903, in Vol. II, p. 1150.

this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title [99].

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Civil Service Commission [97A], to the Federal Supplementary Medical Insurance Trust Fund, the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Civil Service Commission and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(e) In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (c) applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.

(f) Amounts paid to the Secretary under subsection (c) or (e) shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.

(g) In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(h) In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to section 1843 is applicable, subsections (a), (b), (c), and (d) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1843(d).

FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND [100]

SEC. 1841. [42 U.S.C. 1395t] (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Supplementary Medical Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, such fund as provided in this part.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Fi-

[99] See 5 U.S.C. § 8906, in Vol. II, p. 1150.

[100] See P.L. 95-210, § 3, with respect to demonstration projects for physician-directed clinics in urban medically underserved areas, in Vol. II, p. 1681.

nancing Administration [101] shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.[102]

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act [103], as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield

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[101] P.L. 95-292, § 5, deleted "Commissioner of Social Security" and substituted "Administrator of Health Care Financing Administration", effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that the amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

[102] P.L. 94-274, § 204(7), provides that, effective April 21, 1976, the period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975, for purposes of § 1841(b).

[103] See text of Second Liberty Bond Act in 31 U.S.C. §§ 752-754, in Vol. II, p. 1195.

is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(g) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

(h) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Civil Service Commission [103A] in making deductions pursuant to section 1840(d). During each fiscal year, or after the close of such fiscal year, the Civil Service Commission shall certify to the Secretary the amount of the costs it incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.[104]

(i) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1840(b)(1) and section 1842(g). During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the

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[103A] See footnote 97A of this title.

[104] P.L. 94-274, § 201(12), provides that the period July 1, 1976, through September 30, 1976, shall be treated as a fiscal year for purposes of §§ 1841(h) and 1841(i), effective April 21, 1976.

basis for the amount of such costs certified by the Secretary to the Managing Trustee.[104]

USE OF CARRIERS FOR ADMINISTRATION OF BENEFITS [105]

SEC. 1842. [42 U.S.C. 1395u] (a) In order to provide for the administration of the benefits under this part with maximum efficiency and convenience for individuals entitled to benefits under this part and for providers of services and other persons furnishing services to such individuals, and with a view to furthering coordination of the administration of the benefits under part A and under this part, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, which will perform some or all of the following functions (or, to the extent provided in such contracts, will secure performance thereof by other organizations); and, with respect to any of the following functions which involve payments for physicians' services on a reasonable charge basis, the Secretary shall to the extent possible enter into such contracts:

(1)(A) make determinations of the rates and amounts of payments required pursuant to this part to be made to providers of services and other persons on a reasonable cost or reasonable charge basis (as may be applicable);

(B) receive, disburse, and account for funds in making such payments; and

(C) make such audits of the records of providers of services as may be necessary to assure that proper payments are made under this part;

(2)(A) determine compliance with the requirements of section 1861(k) as to utilization review; and

(B) assist providers of services and other persons who furnish services for which payment may be made under this part in the development of procedures relating to utilization practices, make studies of the effectiveness of such procedures and methods for their improvement, assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits under this part, and provide procedures for and assist in arranging, where necessary, the establishment of groups outside hospitals (meeting the requirements of section 1861(k)(2)) to make reviews of utilization;

(3) serve as a channel of communication of information relating to the administration of this part; and

(4) otherwise assist, in such manner as the contract may provide, in discharging administrative duties necessary to carry out the purposes of this part.

(b)(1) Contracts with carriers under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes [106] or any other provision of law requiring competitive bidding.

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations

[105] See P.L. 96-499, § 918(a)(3), with respect to Secretary's report to Congress on reimbursement of clinical laboratories, in Vol. II, p. 1738.

[106] See Revised Statutes of the United States, § 3709, in Vol. II, p. 1224.

under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(3) Each such contract shall provide that the carrier— [107]

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1861(v));

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1870(f)) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service (except in the case of physicians' services and ambulance service furnished as described in section 1862(a)(4), other than for purposes of section 1870(f)) and (II) the physician or other person furnishing such service agrees not to charge for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1862 [107A], and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title;

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is $100 or more, when requests for payment under this part with respect to services furnished him

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[107] P.L. 94-274, § 204(7), provides that the period July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975, for § 1842(b)(3) purposes, effective April 21, 1976.

P.L. 94-368, § 3(c), amended P.L. 94-274, § 204(7), by deleting reference to § 1842(b)(3) of the Social Security Act, effective July 16, 1976.

[107A] As in original. Should be "1862(a)".

are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part;

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part; and

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year (ending on June 30) in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year; [108]

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the twelve-month period (beginning July 1 of each year) [109] in which the service is rendered [110]. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence [111] may not exceed (in the aggregate) the level

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[108] P.L. 96-499, § 946(b), added subparagraph (F), effective with respect to bills submitted or requests for payment made on or after July 1, 1981.

[109] P.L. 94-368, § 3(a), deleted "fiscal year" and substituted "twelve-month period (beginning July 1 of each year)", effective with respect to periods beginning after June 30, 1976; except that, for the twelve-month period beginning July 1, 1976, it shall be applicable with respect to claims filed under part B of title XVIII (after June 30, 1976, and before July 1, 1977) with a carrier designated pursuant to § 1842 and processed by that carrier after the appropriate changes were made pursuant to that § 3 in the prevailing charge levels for the twelve-month period under the third and fourth sentences of § 1842(b)(3).

[110] P.L. 96-499, § 946(a), deleted "bill is submitted or the request for payment is made" and substituted "service is rendered", effective with respect to bills submitted or requests for payment made on or after July 1, 1981.

[111] P.L. 94-368, § 3(b), deleted "fiscal year beginning after June 30, 1973," and substituted "twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence",

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determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.[112] In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health, Education, and Welfare performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for the twelve-month period beginning on July 1 in any calendar year after 1974 [113] shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975.[114]

(4) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable

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effective with respect to periods beginning after June 30, 1976; except that, for the twelve-month period beginning July 1, 1976, it shall be applicable with respect to claims filed under part B of title XVIII (after June 30, 1976, and before July 1, 1977) with a carrier designated pursuant to § 1842 and processed by that carrier after the appropriate changes were made pursuant to that § 3 in the prevailing charge levels for the twelve-month period under the third and fourth sentences of § 1842(b)(3).

[112] P.L. 95-216, § 501(b), added the preceding sentence, effective in the case of items and services furnished after December 20, 1977.

[113] P.L. 94-368, § 2, deleted "fiscal year beginning July 1, 1975," and substituted "twelve-month period beginning on July 1 in any calendar year after 1974", effective with respect to periods beginning after June 30, 1976.

[114] P.L. 94-182, § 101(a), added the preceding sentence, effective with respect to claims filed under part B of title XVIII with a carrier designated pursuant to § 1842 and processed by the carrier after the appropriate changes were made in the prevailing charge levels for the fiscal year beginning July 1, 1975, on the basis of economic index data under the third and fourth sentences of § 1842(b)(3); except that, (1) if less than the correct amount was paid (after the application of this amendment) on any claim processed before December 31, 1975, the correct amount shall be paid by such carrier when (not exceeding 6 months after December 31, 1975) it is administratively feasible, and (2) no such payment shall be made on any claim where the difference between the amount paid and the correct amount due is less than $1.

notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

(5) No payment under this part for a service provided to any individual shall (except as provided in section 1870) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that payment may be made (A) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (B) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) or (B) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this title is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.[115]

(6)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), the carrier shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

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[115] P.L. 95-142, § 2(a)(1), added the preceding sentence, effective with respect to care and services furnished on or after October 25, 1977.

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this title, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B)).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who has a substantial practice outside the teaching setting, the carrier shall take into account the amounts the physician charges for similar services in the physician's outside practice.

(ii) In the case of a physician who does not have a practice described in clause (i), if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the carrier shall base payment under this title on the greater of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i), or

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the carrier shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).[116]

(c) Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract.

(d) Any contract with a carrier under this section may require such carrier or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise partici-

[116] P.L. 96-499, § 948(b), added paragraph (6), effective with respect to cost accounting periods beginning on or after January 1, 1981.

pating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(e)(1) No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such carrier shall be liable to the United States for any payments referred to in paragraph (1) or (2).

(f) For purpose of this part, the term "carrier" means—

(1) with respect to providers of services and other persons, a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization; and

(2) with respect to providers of services only, any agency or organization (not described in paragraph (1)) with which an agreement is in effect under section 1816.

(g) The Railroad Retirement Board shall, in accordance with such regulations as the Secretary may prescribe, contract with a carrier or carriers to perform the functions set out in this section with respect to individuals entitled to benefits as qualified railroad retirement beneficiaries pursuant to section 226(a) of this Act and section 7(d) of the Railroad Retirement Act of 1974 [117].

(h) If a physician's bill or request for payment for a physician's services includes a charge to a patient for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the physician who submitted the bill or for whose services the request for payment was made personally performed or supervised the performance of the test or that another physician with whom the physician shares his practice personally performed or supervised the test, the payment shall be the reasonable charge for the test (less the applicable deductible and coinsurance amounts).

(2) If the bill or request for payment indicates that the test was performed by a laboratory, identifies the laboratory, and indicates the amount the laboratory charged the physician who submitted the bill or for whose services the request for payment was made, payment for the test shall be the lower of—

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[117] P.L. 93-445, § 307, deleted "section 21(b) of the Railroad Retirement Act of 1937" and substituted "section 7(d) of the Railroad Retirement Act of 1974", effective January 1, 1975. See P.L. 75-162, § 7(d), in Vol. II, p. 1273.

(A) the laboratory's reasonable charge to individuals enrolled under this part for the test, or

(B) the amount the laboratory charged the physician for the test,

plus a nominal fee (where the physician bills for such a service) to cover the physician's costs in collecting and handling the sample on which the test was performed (less the applicable deductible and coinsurance amounts).

(3) If the bill or request for payment (A) does not indicate who performed the test, or (B) indicates that the test was performed by a laboratory but does not identify the laboratory or include the amount charged by the laboratory, payment shall be the lowest charged [117A] at which the carrier estimates the test could have been secured by a physician from a laboratory serving the locality (less the applicable deductible and coinsurance amounts).[118]

STATE AGREEMENTS FOR COVERAGE OF ELIGIBLE INDIVIDUALS WHO ARE RECEIVING MONEY PAYMENTS UNDER PUBLIC ASSISTANCE PROGRAMS (OR ARE ELIGIBLE FOR MEDICAL ASSISTANCE) [119]

SEC. 1843. [42 U.S.C. 1395v] (a) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981,[120] enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) (as specified in the agreement) will be enrolled under the program established by this part.

(b) An agreement entered into with any State pursuant to subsection (a) may be applicable to either of the following coverage groups:

(1) individuals receiving money payments under the plan of such State approved under title I or title XVI; or

(2) individuals receiving money payments under all of the plans of such State approved under titles I, X, XIV, and XVI, and part A of title IV.

Except as provided in subsection (g), there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under title II or who is entitled to receive an annuity under the Railroad Retirement Act of 1974 [121]. Effective January 1, 1974, and subject to section 1902(f), the Secretary shall, at the request of any State not eligible to participate in the State plan program established under title XVI, continue in effect the agreement entered into under this section with such State subject to such modifications as the Secretary may by regulations provide to take account of the termination of any plans of such State

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[117A] As in original. Should insert "amount" before "charged" or substitute "charge" for "charged".

[118] P.L. 96-499, § 918(a)(1), added subsection (h), effective with respect to bills submitted and requests for payment made on or after such date (not later than April 1, 1981) as the Secretary of Health and Human Services prescribes by a notice published in the Federal Register.

[119] See P.L. 96-499, § 947(e), with respect to shortened part B termination period for individuals whose premiums medicaid has ceased to pay, in Vol. II, p. 1740.

[120] P.L. 96-499, § 945(e), inserted "or during 1981,", effective December 5, 1980.

[121] P.L. 93-445, § 308, deleted "or pension under the Railroad Retirement Act of 1937" and substituted "under the Railroad Retirement Act of 1974", effective January 1, 1975.

approved under titles I, X, XIV, and XVI and the establishment of the supplemental security income program under title XVI.[122]

(c) For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1836) on the date an agreement covering him is entered into under subsection (a) or he becomes an eligible individual (within the meaning of such section) at any time after such date; and he shall be treated as receiving money payments described in subsection (b) if he receives such payments for the month in which the agreement is entered into or any month thereafter.

(d) In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1839 (without any increase under subsection (c) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h)) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under title II or to an annuity or pension under the Railroad Retirement Act of 1937 [122A].

(e) Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d)(3) shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1837 in the initial general enrollment period provided by section 1837(c). The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed.[123]

(f) With respect to eligible individuals receiving money payments under the plan of a State approved under title I, X, XIV, or XVI or

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[122] P.L. 93-233, § 18(l), added the preceding sentence, effective January 1, 1974.

[122A] P.L. 93-445 amended P.L. 75-162 ("Railroad Retirement Act of 1937") in its entirety and renamed it the "Railroad Retirement Act of 1974".

[123] P.L. 96-499, § 947(a), added the preceding sentence, effective with respect to notices filed after March 1981.

part A of title IV, or eligible to receive medical assistance under the plan of such State approved under title XIX, if the agreement entered into under this section so provides, the term "carrier" as defined in section 1842(f) also includes the State agency, specified in such agreement, which administers or supervises the administration of the plan of such State approved under title I, XVI, or XIX. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State approved under titles I, X, XIV, and XVI, and part A of title IV, and individuals eligible to receive medical assistance under the plan of the State approved under title XIX.

(g)(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981,[124] enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the second sentence of subsection (b) shall not apply with respect to such agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) by the second sentence of such subsection—

(A) subsections (c) and (d)(2) shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a)), and

(B) subsection (d)(3)(B) shall not apply so long as there is in effect a modification entered into by the State under this subsection.[125]

(h)(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981,[124] enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the coverage group described in subsection (b) and specified in such agreement is broadened to include individuals who are eligible to receive medical assistance under the plan of such State approved under title XIX.

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under title XIX if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d)(2) shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a)), and subsection (d)(2)(C) shall be applied by substituting "second month following the first month" for "first month".

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[124] P.L. 96-499, § 945(e), added "or during 1981,", effective December 5, 1980.

[125] P.L. 96-499, § 947(c)(3), deleted subparagraph (C), effective with respect to notices filed after March 1981. For subparagraph (C) as it formerly read, see Vol. II, p. 1837.

APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTIONS AND CONTINGENCY RESERVE

SEC. 1844. [42 U.S.C. 1395w] (a) There are authorized to be appropriated from time to time out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1839(c)(1) for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1839(c)(3), to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1839(c)(4) for such month, minus the dollar amount of the premium per enrollee for such month, as determined under section 1839(c)(3), to

(ii) the dollar amount of the premium per enrollee for such month.

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

PART C—MISCELLANEOUS PROVISIONS

DEFINITIONS OF SERVICES, INSTITUTIONS, ETC.[126]

SEC. 1861. [42 U.S.C. 1395x] For purposes of this title—

Spell of Illness

(a) The term "spell of illness" with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital nor an inpatient of a skilled nursing facility.

Inpatient Hospital Services[127]

(b) The term "inpatient hospital services" means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in a hospital by—

(6) an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field

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[126] See P.L. 94-437, § 403, with respect to an accounting of funds which must be included in the Secretary's annual report, in Vol. II, p. 1496.

[127] See P.L. 93-233, § 15, with respect to payment for services of physicians rendered in a teaching hospital, in Vol. II, p. 1616.

See P.L. 96-499, § 948(c)(1), with respect to a hospital's election for reimbursement of physician's services, in Vol. II, p. 1740.

of dentistry, approved by the Council on Dental Education of the American Dental Association, or in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatry Education of the American Podiatry Association; or

(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title.[128]

Inpatient Psychiatric Hospital Services

(c) The term "inpatient psychiatric hospital services" means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

Inpatient Tuberculosis Hospital Services

(d) The term "inpatient tuberculosis hospital services" means inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Hospital

(e) The term "hospital" (except for purposes of sections 1814(d), 1814(f), and 1835(b), subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) [129] of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient must be under the care of a physician;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times; except that until January 1, 1979 [130], the Secretary is authorized to waive the requirement of this paragraph for any one-year period with respect to any institution, insofar as such requirement relates to the provision of twenty-four-hour nursing service rendered or supervised by a registered professional nurse (except that in any event a registered professional nurse

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[128] P.L. 96-499, § 948(a)(1), amended paragraph (7) in its entirety, effective with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election under § 1861(b)(7)(A) of the Act (as administered in accordance with § 15 of P.L. 93-233) as of September 30, 1978, shall constitute such hospital's election under such section (as amended) on and after October 1, 1978, until otherwise provided by the hospital. For paragraph (7) as it formerly read, see Vol. II, p. 1838.

[129] P.L. 96-499, § 930(k)(1), deleted "subsections (i) and (n)" and substituted "subsection (i)", effective with respect to services furnished on or after July 1, 1981.

[130] P.L. 94-182, § 102, deleted "1976" and substituted "1979", effective December 31, 1975.

must be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6) has in effect a hospital utilization review plan which meets the requirements of subsection (k);

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing;

(8) has in effect an overall plan and budget that meets the requirements of subsection (z); and

(9) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of the individuals who are furnished services in the institution.

For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1814(d) and 1835(b) (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1814(f)(2), and subsection (i) [131] of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in section 1861(j)(1)(A) and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r), to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1814(f)(1), such term includes an institution which (i) is a hospital for purposes of sections 1814(d), 1814(f)(2), and 1835(b) and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2), include any institution which is primarily for the care and treatment of mental diseases or tubercu-

[131] P.L. 96-499, § 930(k)(2), deleted "subsections (i) and (n)" and substituted "subsection (i)", effective with respect to services furnished on or after July 1, 1981.

losis unless it is a tuberculosis hospital (as defined in subsection (g)) or unless it is a psychiatric hospital (as defined in subsection (f)). The term "hospital" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1865. The term "hospital" also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility's failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients, and (iii) if the Secretary has determined that because of the facility's waiver under this subparagraph the facility should limit its scope of services in order not to adversely affect the health and safety of the facility's patients, the facility is so limiting the scope of services it provides; and

(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary may (i),[131A] waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in

[131A] As in original.

unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility's compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.[131B]

Psychiatric Hospital

(f) The term "psychiatric hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e);

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "psychiatric hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Tuberculosis Hospital

(g) The term "tuberculosis hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e);

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals covered by the insurance program established by part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

[131B] P.L. 96–499, § 949, added the preceding sentence, effective December 5, 1980.

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "tuberculosis hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Extended Care Services

(h) The term "extended care services" means the following items and services furnished to an inpatient of a skilled nursing facility and (except as provided in paragraphs (3) and (6)) by such skilled nursing facility—

(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical, occupational, or speech therapy furnished by the skilled nursing facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the skilled nursing facility as are ordinarily furnished by such facility for the care and treatment of inpatients;

(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (l)), under a teaching program of such hospital approved as provided in the last sentence of subsection (b), and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients as are generally provided by skilled nursing facilities;

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

Post-Hospital Extended Care Services

(i) The term "post-hospital extended care services" means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the skilled nursing facility (A) within 30 [132] days after discharge from such hospital, or [133] (B) within such time as it would be medically appropriate to begin an active course of treatment, in the case of an individual whose condition is such that

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[132] P.L. 96-499, § 950(1), deleted "14" and substituted "30", effective December 5, 1980.

[133] P.L. 96-499, § 950(2), deleted subparagraph (B) and redesignated subparagraph (C) as subparagraph (B), effective December 5, 1980. For subparagraph (B) as it formerly read, see Vol. II, p. 1838.

skilled nursing facility care would not be medically appropriate within 30 [132] days after discharge from a hospital; and an individual shall be deemed not to have been discharged from a skilled nursing facility if, within 30 [132] days after discharge therefrom, he is admitted to such facility or any other skilled nursing facility.

Skilled Nursing Facility [134]

(j) The term "skilled nursing facility" means (except for purposes of subsection (a)(2)) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (l)) with one or more hospitals having agreements in effect under section 1866 and which—

(1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) has policies, which are developed with the advice of (and with provision of review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

(3) has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies;

(4)(A) has a requirement that the health care of every patient must be under the supervision of a physician, and (B) provides for having a physician available to furnish necessary medical care in case of emergency;

(5) maintains clinical records on all patients;

(6) provides 24-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time;

(7) provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals;

(8) has in effect a utilization review plan which meets the requirements of subsection (k);

(9) in the case of an institution in any State in which State or applicable local law provides for the licensing of institutions of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing;

(10) has in effect an overall plan and budget that meets the requirements of subsection (z);

(11) complies with the requirements of section 1124; [135]

(12) cooperates in an effective program which provides for a regular program of independent medical evaluation and audit

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[134] See P.L. 95–142, § 21(b), with respect to publication of regulations defining charges which may be made against patients' funds, in Vol. II, p. 1678.

[135] P.L. 95–142, § 3(a)(2), amended paragraph (11) in its entirety, effective October 25, 1977. For paragraph (11) as it formerly read, see Vol. II, p. 1791.

of the patients in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each patient's need for skilled nursing facility care);

(13) meets such provisions of such edition (as is specified by the Secretary in regulations) of [136] [137] the Life Safety Code of the National Fire Protection Association [138] as are applicable to nursing homes; except that the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a nursing home, but only if such waiver will not adversely affect the health and safety of the patients; except that the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing facilities;

(14) establishes and maintains a system that (A) assures a full and complete accounting of its patients' personal funds, and (B) includes the use of such separate account for such funds as will preclude any commingling of such funds with facility funds or with the funds of any person other than another such patient; and [139]

(15) meets such other conditions relating to the health and safety of individuals who are furnished services in such institution or relating to the physical facilities thereof as the Secretary may find necessary (subject to the second sentence of section 1863), except that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution. Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this subsection to be filed with the Secretary shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under titles XVIII and XIX of this Act;

except that such term shall not (other than for purposes of subsection (a)(2)) include any institution which is primarily for the care and treatment of mental diseases or tuberculosis. For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. The term "skilled nursing facility" also includes an institution described in paragraph (1) of subsection (y), to the extent and subject to the limitations provided in such subsection. To the extent that paragraph (6) of this subsection may be deemed to require that any skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if he finds that—

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[136] P.L. 94-182, § 106(a), deleted "(21st edition, 1967)" and substituted "(23d edition, 1973)", effective June 1, 1976, subject to P.L. 94-182, § 106(c), in Vol. II, p. 1655.

[137] P.L. 96-499, § 915(a), inserted "such edition (as is specified by the Secretary in regulations) of" and deleted "(23d edition, 1973)", effective December 5, 1980.

[138] See P.L. 96-499, § 915(b), with respect to Life Safety Code requirements, in Vol. II, p. 1738.

[139] P.L. 95-142, § 21(a), added paragraph (14), effective July 1, 1978.

(A) such facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

(B) such facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week, and

(C) such facility (i) has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or (ii) has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty.

Utilization Review

(k) A utilization review plan of a hospital or skilled nursing facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this title and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians (of which at least two must be physicians described in subsection (r)(1) of this section) [140], with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and skilled nursing facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

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[140] P.L. 96-499, § 951(b), added "(of which at least two must be physicians described in subsection (r)(1) of this section)", effective January 1, 1981.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or skilled nursing facility where, because of the small size of the institution, or (in the case of a skilled nursing facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection. If the Secretary determines that the utilization review procedures established pursuant to title XIX are superior in their effectiveness to the procedures required under this section, he may, to the extent that he deems it appropriate, require for purposes of this title that the procedures established pursuant to title XIX be utilized instead of the procedures required by this section.

Agreements for Transfer Between Skilled Nursing Facilities and Hospitals

(l) A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the skilled nursing facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any skilled nursing facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1864 is in effect (or, in the case of a State in which no such agency has an agreement under section 1864, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this title.

Home Health Services [141]

(m) The term "home health services" means the following items and services furnished to an individual, who is under the care of a

[141] See P.L. 94-63, § 602(b)(1)-(b)(3), with respect to grants to assist in training personnel to provide home health services, in Vol. II, p. 1649.

See P.L. 95-142, § 18(a), (b), (c), with respect to the requirement to report to Congress on home health and other in-home services, in Vol. II, p. 1677.

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physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical, occupational, or speech therapy;

(3) medical social services under the direction of a physician;

(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary [142];

(5) medical supplies (other than drugs and biologicals), and the use of medical appliances, while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital under a teaching program of such hospital approved as provided in the last sentence of subsection (b); and

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),

but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

[(n) Repealed.[143]]

Home Health Agency [144]

(o) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

See P.L. 96-499, § 966, with respect to demonstration projects relating to training of AFDC recipients as home health aides, in Vol. II, p. 1741.

[142] P.L. 96-499, § 930(l), added "who has successfully completed a training program approved by the Secretary", effective with respect to services furnished on or after July 1, 1981.

[143] P.L. 96-499, § 930(m), repealed subsection (n), effective December 5, 1980. For subsection (n) as it formerly read, see Vol. II, p. 1838.

[144] See P.L. 94-63, § 602(a), with respect to grants to certain agencies for provision of home health services, in Vol. II, p. 1649.

P.L. 95-626, § 207(b), repealed P.L. 94-63, § 602, effective October 1, 1978.

See Public Health Service Act (P.L. 62-265), § 339, with respect to home health services, in Vol. II, p. 1242.

See P.L. 96-499, § 930(s)(2), with respect to financial security, in Vol. II, p. 1739.

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

(5) has in effect an overall plan and budget that meets the requirements of subsection (z);

(6) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization; and

(7) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program; [145]

[146] except that for purposes of part A such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases.

Outpatient Physical Therapy Services

(p) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in section 1861(r)(1)), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established, and is periodically reviewed, by a physician (as so defined);

excluding, however—

(3) any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital; and

(4) any such service—

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[145] P.L. 96-499, § 930(n)(1), added paragraph (7), effective December 5, 1980.

[146] P.L. 96-499, § 930(n)(2), deleted "except that such term shall not include a private organization which is not a nonprofit organization exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954 (or a subdivision of such organization) unless it is licensed pursuant to State law and it meets such additional standards and requirements as may be prescribed in regulations; and", effective with respect to services furnished on or after July 1, 1981.

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

The term "outpatient physical therapy services" also includes physical therapy services furnished an individual by a physical therapist (in his office or in such individual's home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. The term "outpatient physical therapy services" also includes speech pathology services furnished by a provider of services, a clinic, rehabilitation agency, or by a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient, subject to the conditions prescribed in this subsection.

Physicians' Services

(q) The term "physicians' services" means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services described in subsection (b)(6)).

Physician

(r) The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1101(a)(7)), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions,[147] (3) a doctor of podiatric medicine for the purposes of subsection (s) of this section but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k) and (m) of this section and sections 1814(a) and 1835 but only if his performance of functions under subsections (k) and (m) and sections 1814(a) and 1835 is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform,[148] (4) a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia,[149] or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation demonstrated by X-ray to exist) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1862(a)(4) and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1862(a)(4)) are furnished.

Medical and Other Health Services

(s) The term "medical and other health services" means any of the following items or services:

(1) physicians' services;

(2)(A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;

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[147] P.L. 96-499, § 936(a), amended paragraph (2) in its entirety, effective with respect to services provided on or after July 1, 1981. For paragraph (2) as it formerly read, see Vol. II, p. 1838.

[148] P.L. 96-499, § 951(a), amended paragraph (3) in its entirety, effective January 1, 1981. For paragraph (3) as it formerly read, see Vol. II, p. 1838.

[149] P.L. 96-499, § 937(a), deleted "establishing the necessity for prosthetic lenses," and substituted "services related to the condition of aphakia,", effective with respect to services furnished on or after July 1, 1981.

(B) hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

(D) outpatient physical therapy services;

(E) rural health clinic services; [150]

(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies; [151] and

(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in section 1861(r)(1), for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician; [152]

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) [153] used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section), whether furnished on a rental basis or purchased;

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[150] P.L. 95-210, § 1(g), added subparagraph (E), effective with respect to services rendered on or after March 1, 1978.

[151] P.L. 95-292, § 4(d)(3), added subparagraph (F), effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that the amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

[152] P.L. 96-499, § 938(a), added subparagraph (G), effective with respect to services furnished on or after January 1, 1981.

[153] P.L. 95-216, § 501(a), inserted the parenthetical material, effective with respect to items and services furnished after December 20, 1977.

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices;

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition; and

(10) pneumococcal vaccine and its administration.[154]

No diagnostic tests performed in any laboratory which is independent of a physician's office, a rural health clinic,[155] or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1814(d)) shall be included within paragraph (3) unless such laboratory—

(11) [156] if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(12) [156] meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

(13) [156] would not be included under subsection (b) if it were furnished to an inpatient of a hospital; or

(14) [156] is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1814(d) shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

Drugs and Biologicals

(t) The term "drugs" and the term "biologicals", except for purposes of subsection (m)(5) of this section, include only such drugs and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New

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[154] P.L. 96-611, § 1(a)(1)(D), added this paragraph (10), effective on, and applicable to services furnished on or after, July 1, 1981.

[155] P.L. 95-210, § 1(h), added ", a rural health clinic,", effective with respect to services rendered on or after March 1, 1978.

[156] P.L. 96-611, § 1(a)(1)(A), redesignated paragraphs (10), (11), (12), and (13) as paragraphs (11), (12), (13), and (14), respectively, effective on, and applicable to services furnished on or after July 1, 1981.

Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.

Provider of Services

(u) The term "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility,[157] home health agency, detoxification facility,[158] or, for purposes of section 1814(g) and section 1835(e), a fund.

Reasonable Cost

(v)(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this title, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this title) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by

[157] P.L. 96-499, § 933(c), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[158] P.L. 96-499, § 931(c), inserted "detoxification facility,", effective April 1, 1981.

this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A, but only if

(I) payment for such services as furnished under such arrangement would be made under part A to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) or for which entitlement exists by reason of clause (II) of section 1832(a)(2)(B)(i) and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the uses of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under title XIX (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis

by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this title not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State; except that the foregoing provisions of this subparagraph shall not apply to any skilled nursing facility in such State if—

(i) such facility is a distinct part of or directly operated by a hospital, or

(ii) such facility operates in a close, formal satellite relationship (as defined in regulations of the Secretary) with a participating hospital or hospitals.

Notwithstanding the previous provisions of this paragraph in the case of a facility specified in clause (ii) of this subparagraph, the reasonable cost of any services furnished by such facility as determined by the Secretary under this subsection shall not exceed 150 percent of the costs determined by the application of this subparagraph (without regard to such clause (ii)).

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 1121(a) in accordance with the uniform reporting system (established under such section) for that type of provider.[159]

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a Professional Standards Review Organization (or, in the absence of such a qualified organization, an organization or agency with review responsibility as is otherwise provided for under part A of title XI) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this title at the payment rate described in clause (ii) during the period in which—

(I) such post-hospital extended care services for the individual are medically necessary and not otherwise available to the individual (as so determined),

(II) inpatient hospital services for the individual are not medically necessary, and

(III) the individual is entitled to have payment made for post-hospital extended care services under this title,

except that if the Secretary determines that the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more, such payment shall be made (during such period) on the basis of the reasonable cost of inpatient hospital services.

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[159] P.L. 95-142, § 19(b)(1), added subparagraph (F), effective as described in P.L. 95-142, § 19(c)(2)(A) and (B) in Vol. II, p. 1677.

(ii)(I) Except as provided in subclause (II), the payment rate referred to in clause (i) is a rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State plan approved under title XIX for the State in which such hospital is located, or, if the State in which the hospital is located does not have a State plan approved under title XIX, the estimated adjusted State-wide average allowable costs per patient-day for extended care services under this title in that State.

(II) If a hospital has a unit which is a skilled nursing facility, the payment rate referred to in clause (i) for the hospital is a rate equal to the lesser of the rate described in subclause (I) or the allowable costs in effect under this title for extended care services provided to patients of such unit.

(iii) Any day on which an individual receives inpatient services for which payment is made under this subparagraph shall, for purposes of this Act (other than this subparagraph), be deemed to be a day on which the individual received inpatient hospital services.

(iv) For the purpose of determining the occupancy rate with respect to hospitals under clause (i)—

(I) public hospitals under common ownership may elect (with the approval of the Secretary) to be treated as a single hospital, and

(II) beginning two years after the date this subparagraph is first applied with respect to a hospital, the Secretary, to the extent feasible, shall not treat as an inpatient an individual with respect to whom payment is made to the hospital only because of this subparagraph or section 1902(h).[160]

(H) In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the financial security requirement described in subsection (o)(7);

(ii) in the case of home health agencies to which the financial security requirement described in subsection (o)(7) applies, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this title to the agency, except that such costs may be included in reasonable cost if the Secretary determines that the agency was acting in good faith in borrowing the amounts;

(iii) in the case of contracts entered into by a home health agency after the date of the enactment of this subparagraph for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract (I) which is entered into for a period exceeding five years, or (II) which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency; and

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[160] P.L. 96-499, § 902(a)(1), added subparagraph (G), effective on the date of which final regulations, promulgated by the Secretary to implement this amendment, are first issued; and those regulations shall be issued not later than June 1, 1981.

(iv) in the case of contracts entered into by a home health agency before the date of the enactment of this subparagraph for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract, which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency, to the extent that such cost exceeds the reasonable value of the services furnished on behalf of such agency.[161]

(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this title and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after the date of the enactment of this subparagraph and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.[162]

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this title with respect to such services may not exceed an amount equal to the reasonable cost of such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this title furnishes to an individual items or services

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[161] P.L. 96-499, § 930(p), added subparagraph (H), effective with respect to services furnished on or after July 1, 1981.

[162] P.L. 96-499, § 952, added subparagraph (I), effective December 5, 1980.

which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the equivalent of the reasonable cost of the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this title, the amount of the payment with respect to such bed and board under part A shall be the reasonable cost of such bed and board furnished in semi-private accommodations (determined pursuant to paragraph (1)) minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services determined to be necessary in the efficient delivery of needed health services and charges are imposed for such more expensive items or services under the authority granted in section 1866(a)(2)(B)(ii), the amount of payment with respect to such items or services otherwise due such provider in any fiscal period shall be reduced to the extent that such payment plus such charges exceed the cost actually incurred for such items or services in the fiscal period in which such charges are imposed.

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organization, specified in the first sentence of section 1861(p) the amount included in any payment to such provider or other organization under this title as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal to the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

(B) Notwithstanding the provisions of subparagraph (A), if a provider of services or other organization specified in the first sentence of section 1861(p) requires the services of a therapist on a limited part-time basis, or only to perform intermittent services,

the Secretary may make payment on the basis of a reasonable rate per unit of service, even though such rate is greater per unit of time than salary related amounts, where he finds that such greater payment is, in the aggregate, less than the amount that would have been paid if such organization had employed a therapist on a full- or part-time salary basis.

(6) For purposes of this subsection, the term "semi-private accommodations" means two-bed, three-bed, or four-bed accommodations.

(7) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

Arrangements for Certain Services

(w)(1) [163] The term "arrangements" is limited to arrangements under which receipt of payment by the hospital, skilled nursing facility, or home health agency (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this title, discharges the liability of such individual or any other person to pay for the services.

(2) Utilization review activities conducted, in accordance with the requirements of the program established under part B of title XI of the Social Security Act with respect to services furnished by a hospital to patients insured under part A of this title or entitled to have payment made for such services under part B of this title or under [164] a State plan approved under title V or XIX, by a Professional Standards Review Organization designated for the area in which such hospital is located shall be deemed to have been conducted pursuant to arrangements between such hospital and such organization under which such hospital is obligated to pay to such organization, as a condition of receiving payment for hospital services so furnished under this part or under such a State plan, such amount as is reasonably incurred and requested (as determined under regulations of the Secretary) by such organization in conducting such review activities with respect to services furnished by such hospital to such patients.[165]

State and United States

(x) The terms "State" and "United States" have the meaning given to them by subsections (h) and (i), respectively, of section 210.

Post-Hospital Extended Care in Christian Science Skilled Nursing Facilities

(y)(1) The term "skilled nursing facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only (except for purposes of subsection (a)(2)) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limi-

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[163] P.L. 94-182, § 112(a)(1), added "(1)" after "(w)", effective with respect to utilization review activities conducted on and after February 1, 1976.

[164] P.L. 95-142, § 5(m), added "part B of this title or under", effective October 25, 1977.

[165] P.L. 94-182, § 112(a)(1), added paragraph (2), effective with respect to utilization review activities conducted on and after February 1, 1976.

tations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations.

(2) Notwithstanding any other provision of this title, payment under part A may not be made for services furnished an individual in a skilled nursing facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph applies.

(3) The amount payable under part A for post-hospital extended care services furnished an individual during any spell of illness in a skilled nursing facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1813(a)(3)).

(4) For purposes of subsection (i), the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

Institutional Planning

(z) An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility,[166] or home health agency shall be considered sufficient if it—

(1) provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in subparagraph (1) is applicable) which includes and

[166] P.L. 96-499, § 933(d), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $100,000 related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(3) provides for review and updating at least annually; and

(4) is prepared, under the direction of the governing body of the institution or agency, by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the institution or agency.

Rural Health Clinic Services [167]

(aa)(1) The term "rural health clinic services" means—

(A) physicians' services and such services and supplies as are covered under section 1861(s)(2)(A) if furnished as an incident to a physician's professional service and items and services described in section 1861(s)(10) [168],

(B) such services furnished by a physician assistant or by a nurse practitioner and such services and supplies furnished as an incident to his service as would otherwise be covered if furnished by a physician or as an incident to a physician's service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician described in paragraph (2)(B),

when furnished to an individual as an outpatient of a rural health clinic.

(2) The term "rural health clinic" means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic

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[167] P.L. 96-210, § 1(d), added subsection (aa), effective with respect to services rendered on or after March 1, 1978.

See P.L. 95-210, § 1(e), with respect to private, nonprofit health care clinics, in Vol. II, p. 1680.

[168] P.L. 96-611, § 1(b)(3), inserted "and items and services described in section 1861(s)(10)", effective on, and applicable to services furnished on or after, July 1, 1981.

patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (E) and relating to the provision of the clinic's services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this title;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has appropriate procedures for review of ultilization [169] of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(J) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

For the purposes of this title, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the Secretary either (I) as an area with a shortage of personal health services under section 1302(7) of the Public Health Service Act [170] or (II) as a health manpower shortage area described in section 332(a)(1)(A) of that Act [171] because of its shortage of primary medical care manpower, (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this title, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged

[169] As in original. Should be "utilization".
[170] See P.L. 62-265, § 1302(7), in Vol. II, p. 1256.
[171] See P.L. 62-265, § 332(a)(1)(A), in Vol. II, p. 1242.

for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1833, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this title or title XIX and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this title and title XIX, as still satisfying the requirement of such clause.

(3) The term "physician assistant" and the term "nurse practitioner" mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations.

Alcohol Detoxification Facility Services [172]

(bb)(1) The term "alcohol detoxification facility services" means services provided by a detoxification facility in order to reduce or eliminate the amount of alcohol in the body, but only to the extent that such services would be covered under subsection (b) if furnished as inpatient services by a hospital, or are physicians' services covered under subsection (s).

(2) The term "detoxification facility" means a public or voluntary community-based nonprofit facility, other than a hospital, which—

(A) is engaged in furnishing to inpatients the services described in paragraph (1);

(B) is accredited by the Joint Commission on the Accreditation of Hospitals as meeting the Accreditation Program for Psychiatric Facilities standards (1979 edition), or is found by the Secretary to meet such standards;

(C) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring services not available at the facility; and

(D) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by the facility.

Comprehensive Outpatient Rehabilitation Facility Services [173]

(cc)(1) The term "comprehensive outpatient rehabilitation facility services" means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

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[172] P.L. 96-499, § 931(d), added subsection (bb), effective April 1, 1981.

[173] P.L. 96-499, § 933(e), added subsection (cc), effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

(A) physicians' services;

(B) physical therapy, occupational therapy, speech pathology services, and respiratory therapy;

(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

(D) social and psychological services;

(E) nursing care provided by or under the supervision of a registered professional nurse;

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self administered [174];

(G) supplies, appliances, and equipment, including the purchase or rental of equipment; and

(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an outpatient of a hospital.

(2) The term "comprehensive outpatient rehabilitation facility" means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;

(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in section 1861(r)(1), who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

(C) maintains clinical records on all patients;

(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standard establishment for such licensing;

(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

(H) has in effect an overall plan and budget that meets the requirements of subsection (z); and

(I) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities.

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[174] As in original. Should be "self-administered".

EXCLUSIONS FROM COVERAGE

SEC. 1862. [42 U.S.C. 1395y] (a) Notwithstanding any other provisions of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1) which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, or, in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness [175];

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for;

(3) which are paid for directly or indirectly by a governmental entity (other than under this Act and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1861(aa)(1), and in such other cases [176] as the Secretary may specify;

(4) which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1814(f) and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this title, physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items;

(7) where such expenses are for routine physical checkups, eyeglasses or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations (except as otherwise allowed under section 1861(s)(10) and paragraph (1)) [177];

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet;

(9) where such expenses are for custodial care;

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

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[175] P.L. 96-611, § 1(a)(3)(A), inserted ", or, in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness", effective on, and applicable to services furnished on or after, July 1, 1981.

[176] P.L. 95-210, § 1(f), deleted "in such cases" and substituted "in the case of rural health clinic services, as defined in section 1861(aa)(1), and in such other cases", effective with respect to services rendered on or after March 1, 1978.

[177] P.L. 96-611, § 1(a)(3)(B), inserted "(except as otherwise allowed under section 1861(s)(10) and paragraph (1))", effective on, and applicable to services furnished on or after, July 1, 1981.

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure,[178] [179], requires hospitalization in connection with the provision of such services; or [180]

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns [181] or calluses, the trimming of nails, and other routine hygienic care).

(b) Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance [182]. Any payment under this title with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been made under such a law or plan, policy, plan,[183] or insurance [183A]. The Secretary may waive the provisions of this subsection in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.[184]

[(c) Repealed.[185]]

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[178] P.L. 96–499, § 936(c), inserted "or because of the severity of the dental procedure,", effective with respect to services provided on or after July 1, 1981.

[179] As in original. Extra comma should be deleted.

[180] P.L. 93–233, § 18(k)(3), deleted "a dental procedure where the individual suffers from impairments of such severity as to require hospitalization; or" and substituted "the provision of such dental services if the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such services; or", effective with respect to admissions subject to the provisions of § 1814(a)(2) which occur after December 31, 1972.

[181] P.L. 96–499, § 939(a), deleted ", warts,", effective with respect to services furnished on or after July 1, 1981.

[182] P.L. 96–499, § 953(1), inserted "or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance", effective December 5, 1980.

[183] As in original; "plan," should be omitted.

[183A] P.L. 96–499, § 953(2), inserted ", policy, plan, or insurance", effective December 5, 1980.

[184] P.L. 96–499, § 953(3), inserted the preceding sentence, effective December 5, 1980.

See 38 U.S.C. § 5053(d) with respect to care or service furnished by a VA facility to a title XVIII beneficiary who is not eligible for VA benefits, in Vol. II, p. 1221.

See P.L. 94–581, § 115(c), with respect to the report to Congress required with respect to that VA care and service, in Vol. II, p. 1673.

[185] P.L. 94–182, § 103, repealed subsection (c), effective December 31, 1975. For subsection (c) as it formerly read, see Vol. II, p. 1774.

(d)(1) No payment may be made under this title with respect to any item or services furnished to an individual by a person where the Secretary determines under this subsection that such person—

(A) has knowingly and willfully made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under this title or for use in determining the right to a payment under this title;

(B) has submitted or caused to be submitted (except in the case of a provider of services), bills or requests for payment under this title containing charges (or in applicable cases requests for payment of costs to such person) for services rendered which the Secretary finds [186] to be substantially in excess of such person's customary charges (or in applicable cases substantially in excess of such person's costs) for such services, unless the Secretary finds there is good cause for such bills or requests containing such charges (or in applicable cases, such costs); or

(C) has furnished services or supplies which are determined by the Secretary, on the basis of reports transmitted to him in accordance with section 1157 of this Act (or, in the absence of any such report, on the basis of such data as he acquires in the administration of the program under this title), to be substantially in excess of the needs of individuals or to be of a quality which fails to meet professionally recognized standards of health care.[187]

(2) A determination made by the Secretary under this subsection shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, posthospital extended care services, and home health services such determination shall be effective in the manner provided in section 1866(b)(3) and (4) with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) Any person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(4) The Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under title XIX of any determination made under the provisions of this subsection.[188]

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[186] P.L. 95-142, § 13(b)(1), deleted ", with the concurrence of the appropriate program review team appointed pursuant to paragraph (4),", effective October 25, 1977.

[187] P.L. 95-142, § 13(b)(2), amended subparagraph (C) in its entirety, effective October 25, 1977. For subparagraph (C) as it formerly read, see Vol. II, p. 1791.

[188] P.L. 95-142, § 13(a), deleted paragraph (4), effective October 25, 1977. For paragraph (4) as it formerly read, see Vol. II, p. 1791.

P.L. 96-272, § 308(a), added this paragraph (4), effective June 17, 1980.

(e) No payment may be made under this title with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1128 from participation in the program under this title.[189]

CONSULTATION WITH STATE AGENCIES AND OTHER ORGANIZATIONS TO DEVELOP CONDITIONS OF PARTICIPATION FOR PROVIDERS OF SERVICES

SEC. 1863. [42 U.S.C. 1395z] In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (g)(4), (j)(11)[189A], (o)(6), and (cc)(2)(I)[190] of section 1861, or by ambulatory surgical centers under section 1832(a)(2)(F)(i),[191] the Secretary shall consult with the Health Insurance Benefits Advisory Council[192] established by section 1867, appropriate State agencies, and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under title I, XVI, or XIX, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

USE OF STATE AGENCIES TO DETERMINE COMPLIANCE BY PROVIDERS OF SERVICES WITH CONDITIONS OF PARTICIPATION

SEC. 1864. [42 U.S.C. 1395aa] (a) The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whether a facility therein is a rural health clinic as defined in section 1861(aa)(2) or a comprehensive outpatient rehabilitation facility as defined in section 1861(cc)(2)[193, 194] or whether a laboratory meets the requirements of paragraphs (11) and (12)[195] of section 1861(s), or whether a clinic,

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[189] P.L. 96-499, § 913(b), amended subsection (e) in its entirety, effective December 5, 1980. For subsection (e) as it formerly read, see Vol. II, p. 1838.

[189A] As in original. Probably should be "(j)(15)". Not conformed to redesignation by § 234(d) of P.L. 92-603.

[190] P.L. 96-499, § 933(f), deleted "and (o)(6)" and substituted "(o)(6), and (cc)(2)(I)", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[191] P.L. 96-499, § 934(c)(1), inserted "or by ambulatory surgical centers under section 1832(a)(2)(F)(i),", effective December 5, 1980.

[192] See P.L. 92-463, approved October 6, 1972, with respect to provisions governing the operations of advisory committees, in Vol. II, p. 1601.

[193] P.L. 96-499, § 933(g)(1), inserted "or a comprehensive outpatient rehabilitation facility as defined in section 1861(cc)(2)", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[194] P.L. 95-210, § 1(i)(1), inserted "or whether a facility therein is a rural health clinic as defined in section 1861(aa)(2),", effective with respect to services rendered on or after March 1, 1978.

[195] P.L. 96-611, § 1(a)(2), deleted "(10) and (11)" and substituted "(11) and (12)", effective on, and applicable to services furnished on or after, July 1, 1981.

rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1861(p)(4) or whether an ambulatory surgical center meets the standards specified under section 1832(a)(2)(F)(i) [196]. To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic,[197] comprehensive outpatient rehabilitation facility,[198] or home health agency (as those terms are defined in section 1861) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1861(j). Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, ambulatory surgical center,[199] rural health clinic,[200] comprehensive outpatient rehabilitation facility,[198] laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, ambulatory surgical center,[199] rural health clinic,[200] comprehensive outpatient rehabilitation facility,[198] laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this title and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, ambulatory surgical center,[199] rural health clinic [201], comprehensive outpatient rehabilitation facility,[198] laboratory, clinic, agency, or organization.

(b) The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a), and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable to the planning and other efforts directed toward coordination of activities in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A, or related to the

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[196] P.L. 96-499, § 934(c)(2)(A), inserted ", or whether an ambulatory surgical center meets the standards specified under section 1832(a)(2)(F)(i)", effective December 5, 1980.

[197] P.L. 95-210, § 1(i)(2), inserted "rural health clinic,", effective with respect to services rendered on or after March 1, 1978.

[198] P.L. 96-499, § 933(g)(2), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[199] P.L. 96-499, § 934(c)(2)(B), inserted "ambulatory surgical center,", effective December 5, 1980.

[200] P.L. 95-210, § 1(i)(3), inserted "rural health clinic,", effective with respect to services rendered on or after March 1, 1978.

[201] P.L. 95-210, § 1(i)(4), deleted "such facility" and substituted "such health care facility, rural health clinic", effective with respect to services rendered on or after March 1, 1978.

facilities and personnel required for the provision of such services, or related to improving the quality of such services.

(c) The Secretary is authorized to enter into an agreement with any State under which the appropriate State or local agency which performs the certification function described in subsection (a) will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), hospitals which have an agreement with the Secretary under section 1866 and which are accredited by the Joint Commission on the Accreditation of Hospitals. The Secretary shall pay for such services in the manner prescribed in subsection (b).

EFFECT OF ACCREDITATION

SEC. 1865. [42 U.S.C. 1395bb] (a) Except as provided in subsection (b) and the second sentence of section 1863, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2) such institution (if it is included within a survey described in section 1864(c)) authorizes the Commission to release to the Secretary (on a confidential basis) upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861(e); except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose) or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with section 1861(e)(6) or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an institution or agency by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1861(e), (j), or (o), as the case may be, are met, he may, to the extent he deems it appropriate, treat such institution or agency as meeting the condition or conditions with respect to which he made such finding.

(b) Notwithstanding any other provision of this title, if the Secretary finds following a survey made pursuant to section 1864(c) that an institution has significant deficiencies (as defined in regulations pertaining to health and safety), such institution shall, after the date of notice of such finding to the hospital and for such period as may be prescribed in regulations, be deemed not to meet the requirements of the numbered paragraphs of section 1861(e).

AGREEMENTS WITH PROVIDERS OF SERVICES

SEC. 1866. [42 U.S.C. 1395cc] (a)(1) Any provider of services (except a fund designated for purposes of section 1814(g) and section 1835(e)) shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this title (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this title or for which such provider is paid pursuant to the provisions of section 1814(e)), and

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this title because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) [201A], but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title, and

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person, and

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this title) with respect to the provider.[202]

An agreement under this paragraph with a skilled nursing facility shall be for a term of not exceeding 12 months, except that the Secretary may extend such term for a period not exceeding 2 months, where the health and safety of patients will not be jeopardized thereby, if he finds that such extension is necessary to prevent irreparable harm to such facility or hardship to the individuals being furnished items or services by such facility or if he finds it impracticable within such 12-month period to determine whether such facility is complying with the provisions of this title and regulations thereunder.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1813(a)(1) or (a)(3), section 1833(b), or

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[201A] As in original. Should insert "of section 1862(a)" after "(9)".

[202] P.L. 95-142, § 15(a)(2), added subparagraph (D), effective with respect to agreements entered into or renewed on and after October 25, 1977.

section 1861(y)(3) with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary)[204]. In the case of items and services described in section 1833(c), clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1861(s)(10) for which payment is made under part B.[205]

(B)(i) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this title, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment may be made under this title.

(ii) Where a provider of services customarily furnishes an individual items or services which are more expensive than the items or services determined to be necessary in the efficient delivery of needed health services under this title and which have not been requested by such individual, such provider may (except with respect to emergency services) also charge such individual or other person for such more expensive items or services to the extent that the costs of (or, if less, the customary charges for) such more expensive items or services experienced by such provider in the second fiscal period immediately preceding the fiscal period in which such charges are imposed exceed the cost of such items or services determined to be necessary in the efficient delivery of needed health services, but only if—

(I) the Secretary has provided notice to the public of any charges being imposed on individuals entitled to benefits under this title on account of costs in excess of the costs determined to be necessary in the efficient delivery of needed health services under this title by particular providers of services in the area in which such items or services are furnished, and

(II) the provider of services has identified such charges to such individual or other person, in such manner as the Secre-

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[204] P.L. 95-292, § 4(e), inserted the parenthetical material, effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

[205] P.L. 96-611, § 1(b)(4), added the preceding sentence, effective on, and applicable to services furnished on or after, July 1, 1981.

tary may prescribe, as charges to meet costs in excess of the cost determined to be necessary in the efficient delivery of needed health services under this title.

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1813(a)(2), except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this title, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined) and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) has been replaced on behalf of such individual or arrangements have been made for its replacement on his behalf. For purposes of subparagraph (C), whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1813(a)(2).

(D) Where a provider of services customarily furnishes items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this title, such provider, notwithstanding the preceding provisions of this paragraph, may not, under the authority of section 1866(a)(2)(B)(ii), charge any individual or other person any amount for such items or services in excess of the amount of the payment which may otherwise be made for such items or services under this title if the admitting physician has a direct or indirect financial interest in such provider.

(3) The Secretary may refuse to enter into or renew an agreement under this section with a provider of services if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of such provider, is a person described in section 1126(a).[206]

(b) An agreement with the Secretary under this section may be terminated (and in the case of a skilled nursing facility, prior to the end of the term specified in subsection (a)(1))—

(1) by the provider of services at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than 6 months shall not be required, or

(2) by the Secretary at such time and upon such reasonable notice to the provider of services and the public as may be specified in regulations, but only after the Secretary has determined (A) that such provider of services is not complying sub-

[206] P.L. 95-142, § 8(b)(1), added paragraph (3), effective with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after February 1, 1978.

stantially with the provisions of such agreement, or with the provisions of this title and regulations thereunder, or (B) that such provider of services no longer substantially meets the applicable provisions of section 1861, or (C) that such provider of services has failed (i)[207] to provide such information as the Secretary finds necessary to determine whether payments are or were due under this title and the amounts thereof, or has refused to permit such examination of its fiscal and other records by or on behalf of the Secretary as may be necessary to verify such information, or (ii) to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to such provider by the Secretary (I) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such provider has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (II) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such provider and any wholly owned supplier or between such provider and any subcontractor,[208] or (D) that such provider has made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under this title or for use in determining the right to a payment under this title, or (E) that such provider has submitted, or caused to be submitted, requests for payment under this title of amounts for rendering services substantially in excess of the costs incurred by such provider for rendering such services, or (F) that such provider has furnished services or supplies which are determined by the Secretary to be substantially in excess of the needs of individuals or to be of a quality which fails to meet professionally recognized standards of health care,[209] or (G) that such provider (at the time the agreement was entered into) did not fully and accurately make any disclosure required of it by section 1126(a).[210]

Any termination shall be applicable—

(3) in the case of inpatient hospital services (including tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to the effective date of such termination.

(4)(A) with respect to home health services furnished to an individual under a plan therefor established on or after the

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[207] P.L. 95-142, § 3(b), added "(i)", effective October 25, 1977.

[208] P.L. 95-142, § 3(b), added the clause "or (ii) . . . such provider and any subcontractor,", effective October 25, 1977.

[209] P.L. 95-142, § 13(b)(3), amended subparagraph (F) in its entirety, effective October 25, 1977. For subparagraph (F) as it formerly read, see Vol. II, p. 1791.

[210] P.L. 95-142, § 8(b)(2), added subparagraph (G), effective with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after February 1, 1978.

effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual after the calendar year in which such termination is effective, and

(5) with respect to any other items and services furnished on or after the effective date of such termination.

(c)(1) Where an agreement filed under this title by a provider of services has been terminated by the Secretary, such provider may not file another agreement under this title unless the Secretary finds that the reason for the termination has been removed and that there is reasonable assurance that it will not recur.

(2) In the case of a skilled nursing facility participating in the programs established by this title and title XIX, the Secretary may enter into an agreement under this section only if such facility has been approved pursuant to section 1910(a)[211], and the term of any such agreement shall be in accordance with the period of approval of eligibility specified by the Secretary pursuant to such section.

(3) Where an agreement filed under this title by a provider of services has been terminated by the Secretary, the Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under title XIX of such termination.[212]

(d) If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1861(k) of long-stay cases in a hospital or skilled nursing facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this title for inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the

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[211] P.L. 95-210, § 2(e), added "(a)", effective with respect to medical assistance provided, under a State plan approved under title XIX, on and after July 1, 1978, except where State legislation is required for the plan to meet the additional requirements imposed by this section. In the latter case, the State plan shall not be regarded as failing to comply with these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State's legislature that begins after December 13, 1977.

[212] P.L. 96-272, § 308(b), added paragraph (3), effective June 17, 1980.

requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

(f)(1) Where the Secretary determines that a skilled nursing facility which has filed an agreement pursuant to subsection (a)(1) or which has been certified for participation in a plan approved under title XIX no longer substantially meets the provisions of section 1861(j), and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the Secretary shall provide for the termination of the agreement or of the certification of the facility and shall provide, or

(B) do not immediately jeopardize the health and safety of its patients, the Secretary may, in lieu of terminating the agreement or certification of the facility, provide

that no payment shall be made under this title (and order a State agency established or designated pursuant to section 1902(a)(5) of this Act to administer or supervise the administration of the State plan under title XIX of this Act to deny payment under such title XIX) with respect to any individual admitted to such facility after a date specified by him.

(2) The Secretary shall not make such a decision with respect to a facility until such facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the provisions of section 1861(j), to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The Secretary's decision to deny payment may be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and its effectiveness shall terminate (A) when the Secretary finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the provisions of section 1861(j), or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of section 1861(j) on the date specified in such clause, the Secretary shall terminate such facility's agreement or provide for termination of such facility's certification, notwithstanding the provisions of paragraph (2) of subsection (b), effective with the first day of the first month following the month specified in such clause.[213]

HEALTH INSURANCE BENEFITS ADVISORY COUNCIL [214]

SEC. 1867. [42 U.S.C. 1395dd] (a) There is hereby created a Health Insurance Benefits Advisory Council which shall consist of 19 persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive services. The Secretary shall from time to time appoint one of the

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[213] P.L. 96-499, § 916(a), added subsection (f), effective December 5, 1980.

[214] See P.L. 92-463, approved October 6, 1972, with respect to provisions governing the operations of advisory committees, in Vol. II, p. 1601.
See P.L. 95-216, § 361(i), with respect to timely notices of meetings, in Vol. II, p. 1502.

members to serve as Chairman. The members shall include persons who are outstanding in fields related to hospital, medical, and other health activities, persons who are representative of organizations and associations of professional personnel in the field of medicine, and at least one person who is representative of the general public. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member shall not be eligible to serve continuously for more than two terms. Members of the Advisory Council, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code [215], for persons in the Government service employed intermittently. The Advisory Council shall meet as the Secretary deems necessary, but not less than annually.

(b) It shall be the function of the Advisory Council to provide advice and recommendations for the consideration of the Secretary on matters of general policy with respect to this title and title XIX.

[SEC. 1868. Repealed.[216]]

DETERMINATIONS; APPEALS

SEC. 1869. [42 U.S.C. 1395ff] (a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A, shall be made by the Secretary in accordance with regulations prescribed by him.

(b)(1) Any individual dissatisfied with any determination under subsection (a) as to—

(A) whether he meets the conditions of section 226 of this Act or section 103 of the Social Security Amendments of 1965 [217], or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this title, or section 1818, or section 1819, or

(C) the amount of benefits under part A (including a determination where such amount is determined to be zero)

shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(2) Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available

[215] See 5 U.S.C. § 5703, in Vol. II, p. 1136.
[216] P.L. 90-248, § 164(c), effective January 2 1968.
[217] See P.L. 89-97, § 103, in Vol. II, p. 1433.

to an individual by reason of such subparagraph (C) if the amount in controversy is less than $1,000.

(c) Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1866(b)(2), shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

OVERPAYMENTS ON BEHALF OF INDIVIDUALS AND SETTLEMENT OF CLAIMS FOR BENEFITS ON BEHALF OF DECEASED INDIVIDUALS

SEC. 1870. [42 U.S.C. 1395gg] (a) Any payment under this title to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Where—

(1) more than the correct amount is paid under this title to a provider of services or other person for items or services furnished an individual and the Secretary determines (A) that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or (B) that such provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(2) any payment has been made under section 1814(e) to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under title II of this Act or under the Railroad Retirement Act of 1974 [218], as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under title II of this Act or under the Railroad Retirement Act of 1974 [218], as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under title II of such Act.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1817(g), and section 1841(f), shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1974 [218]) the amount of the overpayment as to which the adjustment is to be made. For purposes of clause (B) of paragraph (1), such provider of services or such other person shall, in the absence of evidence to the contrary, be deemed to be without fault if the Secretary's determination that more than such correct

[218] P.L. 93-445, § 309, deleted "Railroad Retirement Act of 1937" and substituted "Railroad Retirement Act of 1974", effective January 1, 1975.

amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title.

(c) There shall be no adjustment as provided in subsection (b) (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1814(e)) with respect to an individual who is without fault or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4), if such adjustment (or recovery) would defeat the purposes of title II or title XVIII or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this title) against an individual who is without fault shall be deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this title by reason of the provisions of paragraph (1) or (9) of section 1862 [219] and (B) if the Secretary's determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) or where adjustment under subsection (b) is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) If an individual, who received services for which payment may be made to such individual under this title, dies, and payment for such services was made (other than under this title), and the individual died before any payment due him under this title with respect to such services was completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly bene-

[219] As in original. Should be "section 1862(a)".

fit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2) or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) If an individual who received medical and other health services for which payment may be made under section 1832(a)(1) dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

(1) if the person or persons who furnished the services agree that the reasonable charge is the full charge for the services, payment for such services shall be made to such person or persons, and

(2) if the person or persons who furnished the services do not agree that the reasonable charge is the full charge for the

services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.[220]

(g) If an individual, who is enrolled under section 1818(c) of the Social Security Act or under section 1837, dies, and premiums with respect to such enrollment have been received with respect to such individual for any month after the month of his death, such premiums shall be refunded to the person or persons determined by the Secretary under regulations to have paid such premiums or if payment for such premiums was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any. If there is no person who meets the requirements of the preceding sentence such premiums shall be refunded to the person or persons in the priorities specified in paragraphs (2) through (7) of subsection (e).

REGULATIONS [221]

SEC. 1871. [42 U.S.C. 1395hh] The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this title. When used in this title, the term "regulations" means, unless the context otherwise requires, regulations prescribed by the Secretary.

APPLICATION OF CERTAIN PROVISIONS OF TITLE II

SEC. 1872. [42 U.S.C. 1395ii] The provisions of sections 206 and 216(j), and of subsections (a), (d), (e), (f), (h), (i), (j), (k), and (l) of section 205 shall also apply with respect to this title to the same extent as they are applicable with respect to title II.

DESIGNATION OF ORGANIZATION OR PUBLICATION BY NAME

SEC. 1873. [42 U.S.C. 1395jj] Designation in this title, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made.

ADMINISTRATION

SEC. 1874. [42 U.S.C. 1395kk] (a) Except as otherwise provided in this title and in the Railroad Retirement Act of 1974 [222], the insurance programs established by this title shall be administered by the Secretary. The Secretary may perform any of his functions under this title directly, or by contract providing for payment in

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[220] P.L. 96-499, § 954(a), amended subsection (f) in its entirety, effective with respect to claims filed on or after January 1, 1981. For subsection (f) as it formerly read, see Vol. II, p. 1839.

[221] See P.L. 94-437, § 702, with respect to regulations applicable to Indians, in Vol. II, p. 1496.

[222] P.L. 93-445, § 310, deleted "1937" and substituted "1974", effective January 1, 1975.

advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title.

(c) In the course of any hearing, investigation, or other proceeding that he is authorized to conduct under this title, the Secretary may administer oaths and affirmations.

STUDIES AND RECOMMENDATIONS [223]

SEC. 1875. [42 U.S.C. 1395ll] (a) The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged and disabled, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B (including a validation of the accreditation process of the Joint Commission on the Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972 [224], the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 [225], and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972 [226]), and shall transmit to the Congress annually a report concerning the operation of such programs.

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS

SEC. 1876. [42 U.S.C. 1395mm] (a)(1) In lieu of amounts which would otherwise be payable pursuant to sections 1814(b) and 1833(a), the Secretary is authorized to determine, by actuarial methods, as provided in this section, but only with respect to a

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[223] See P.L. 62-265 (Public Health Service Act), § 328(d)(2), with respect to Comptroller General's obligation to report to Congress on hospital-affiliated primary care centers, in Vol. II, p. 1231.
See P.L. 95-113, § 1428, with respect to nutritional status monitoring, in Vol. II, p. 1676.
See P.L. 95-142, § 18, with respect to reporting on home health and other in-home services, in Vol. II, p. 1677.
See P.L. 95-210, § 1(c), with respect to study of copayment for rural health services; and § 4, with respect to report on mental health and other centers, in Vol. II, p. 1680.
See P.L. 96-265, § 506, with respect to additional funds for demonstration project relating to the terminally ill, in Vol. II, p. 1507.
See P.L. 96-499, § 931(f), with respect to alcohol detoxification facility services; § 937(b), with respect to Secretary's report to Congress on optometrists' services; § 958, with respect to various studies and demonstration projects and reports to Congress; and § 966, with respect to demonstration projects relating to training of AFDC recipients as home health aides, in Vol. II, p. 1739.

[224] See P.L. 92-603, § 226, in Vol. II, p. 1464.

[225] See P.L. 90-248, § 402, in Vol. II, p. 1445.

[226] See P.L. 92-603, § 222(a), in Vol. II, p. 1462.

health maintenance organization with which he has entered into a contract under subsection (i), a per capita rate of payment—

(A) for services provided under parts A and B for individuals enrolled with such organization pursuant to subsection (e) who are entitled to hospital insurance benefits under part A and enrolled for medical insurance benefits under part B, and

(B) for services provided under part B for individuals enrolled with such organization pursuant to subsection (e) who are not entitled to benefits under part A but who are enrolled for benefits under part B.

(2) An interim per capita rate of payment for each health maintenance organization shall be determined annually by the Secretary on the basis of each organization's annual operating budget and enrollment forecast which shall be submitted (in such form and in such detail as the Secretary may prescribe) at least 90 days before the beginning of each contract year. Each interim rate shall be equal to the estimated per capita cost (based upon types and components of expenses otherwise reimbursable under this title) of providing services defined in paragraph (3)(A)(iii). In the event that the data requested to be furnished by a health maintenance organization are not furnished timely, such reduction in interim payments may be made by the Secretary as is appropriate, until such time as a reasonable estimate of per capita costs can be made. Each month, the Secretary shall pay each such organization its interim per capita rate, in advance, for each individual enrolled with it pursuant to subsection (e). Each such organization shall submit interim estimated cost reports and enrollment data on a quarterly basis in such form and manner satisfactory to the Secretary, and the Secretary shall adjust each interim per capita rate to the extent necessary to maintain interim payments at the level of current costs. Interim payments made under this paragraph shall be subject to retroactive adjustment at the end of each contract year as provided in paragraph (3).

(3)(A) With respect to any health maintenance organization which has entered into a risk sharing contract with the Secretary pursuant to subsection (i)(2)(A), payments made to such organization shall be subject to the following adjustments at the end of each contract year:

(i) if the Secretary determines that the per capita incurred cost of any such organization in any contract year for providing services described in paragraph (1) is less than the adjusted average per capita incurred cost (as defined herein) of providing such services, the resulting difference (hereinafter referred to as "savings") shall be apportioned following the close of a contract year for such year between such organization and the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (hereinafter collectively referred to as the "Medicare Trust Funds") as follows:

(I) savings up to 20 percent of the adjusted average per capita cost shall be apportioned equally between such organization and the Medicare Trust Funds;

(II) savings in excess of 20 percent of the adjusted average per capita cost shall be apportioned entirely to such Trust Funds;

(ii) if the Secretary determines that the per capita incurred cost of any such organization in any contract year for providing services described in paragraph (1) is greater than the adjusted average per capita incurred cost of providing such services, the resulting difference (hereinafter referred to as "losses"), shall be absorbed by such organization, and shall be carried forward and offset from savings realized in later years [227];

(iii) determination of any amounts payable at the close of the contract year to such organization or to the Trust Funds shall be made as follows:

(I) within 90 days after close of a contract year, interim determination of the amount of estimated savings and apportionment thereof shall be made, actuarially, on the basis of interim reports of costs incurred by an organization, and adjusted average per capita costs incurred (as defined herein), and other evidence acceptable to the Secretary and one-half of any amounts deemed payable to such organization or the Trust Funds shall be paid by such organization or the Secretary as appropriate;

(II) final settlement and payment by the Secretary or organization, as appropriate, of any additional amounts due on basis of such final settlement will be made where adequate data for actuarial computation are available, in timely fashion following submission by such organization of reports specified in subparagraph (C) of this paragraph; and

(III) where such final settlement is reached more than 90 days following submission of reports specified in subparagraph (C) of this paragraph, any amount payable by the Secretary or organization shall be increased by an interest amount, accruing from the 91st day following submission of such report, equal to the average rate of interest payable on Federal obligations if issued on such 91st day for purchase by the Trust Funds.

(iv) The term "adjusted average per capita cost" means the average per capita amount that the Secretary determines (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in the geographic area served by a health maintenance organization or in a similar area, with appropriate adjustment to assure actuarial equivalence, including adjustments relating to age distribution, sex, race, institutional status, disability status, and any other relevant factors) would be payable in any contract year for services covered under this title and types of expenses otherwise reimbursable under this title (including administrative costs incurred by organizations described in sections 1816 and 1842) if such services were to be furnished by other than such health maintenance organization.

(B) With respect to any health maintenance organization which has entered into a reasonable cost reimbursement contract with

[227] P.L. 93-233, § 18(m), deleted ", with the apportionment of savings being proportional to the losses absorbed and not yet offset", effective with respect to services provided after June 30, 1973.

the Secretary pursuant to subsection (i)(2)(B), payments made to such organization shall be subject to suitable retroactive corrective adjustments at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of health services) for the types of expenses otherwise reimbursable under this title for providing services covered under this title to individuals described in paragraph (1).

(C) Any contract with a health maintenance organization under this title shall provide that the Secretary shall require, at such time following the expiration of each accounting period of a health maintenance organization (and in such form and in such detail) as he may prescribe:

(i) that such health maintenance organization report to him in an independently certified financial statement its per capita incurred cost based on the types and components of expenses otherwise reimbursable under this title for providing services described in paragraph (1), including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(ii) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(iii) that in any case in which a health maintenance organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this title, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the health maintenance organization by related organizations and owners) issued by the Secretary in accordance with section 1861(v) of the Social Security Act; and

(iv) that in any case in which compensation is paid by a health maintenance organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

(4) The payments to health maintenance organizations under this subparagraph [227A] with respect to individuals described in subsection (a)(1)(A) shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of such payment to such an organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

[227A] As in original. Should be "subsection".

(A) the product of (i) the number of covered enrollees of such organization for such month (as described in paragraph (1)) who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for such month as determined under section 1839(c)(1), and

(B) the product of (i) the number of covered enrollees of such organization for such month (as described in paragraph (1)) who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for such month as determined under section 1839(c)(4).

The remainder of such payment shall be paid by the former trust fund. For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

(b)(1) The term "health maintenance organization" means a legal entity which provides health services on a prepayment basis to individuals enrolled with such organizations and which—

(A) provides to its enrollees who are insured for benefits under parts A and B of this title or for benefits under part B alone, through institutions, entities, and persons meeting the applicable requirements of section 1861, all of the services and benefits covered under such parts (to the extent applicable under subparagraph (A) or (B) of subsection (a)(1)) which are available to individuals residing in the geographic area served by the organization;

(B) provides such services in the manner prescribed by section 1301(b) of the Public Health Service Act [228], except that solely for the purposes of this section—

(i) the term "basic health services" and references thereto shall be deemed to refer to the services and benefits included under parts A and B of this title;

(ii) the organization shall not be required to fix the basic health services payment under a community rating system;

(iii) the additional nominal payments authorized by section 1301(b)(1)(D) of such Act [229] shall not exceed the limits applicable under subsection (g) of this section; and

(iv) payment for basic health services provided by the organization to its enrollees under this section or for services such enrollees receive other than through the organization shall be made as provided for by this title;

(C) is organized and operated in the manner prescribed by section 1301(c) of the Public Health Service Act [230], except that solely for the purposes of this section—

(i) the term "basic health services" and references thereto shall be deemed to refer to the services and benefits included under parts A and B of this title;

(ii) the organization shall not be reimbursed for the cost of reinsurance except as permitted by subsection (i) of this section; and

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[228] See Public Health Service Act (P.L. 62-265), § 1301(b), in Vol. II, p. 1251.
[229] See Public Health Service Act (P.L. 62-265), § 1301(b)(1)(D), in Vol. II, p. 1251.
[230] See Public Health Service Act (P.L. 62-265), § 1301(c), in Vol. II, p. 1253.

(iii) the organization shall have an open enrollment period as provided for in subsection (k) of this section.

(2)(A) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a "health maintenance organization" within the meaning of paragraph (1), shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions shall be integrated with the administration of section 1312(a) and (b) of the Public Health Service Act [231].

(B) Except as provided in subparagraph (A), the Secretary shall administer the provisions of this section through the Administrator of the Health Care Financing Administration [232 233].

(c) The benefits provided under this section to enrollees of an organization which has entered into a risk sharing contract with the Secretary pursuant to subsection (i)(2)(A) shall consist of—

(1) in the case of an individual who is entitled to hospital insurance benefits under part A and enrolled for medical insurance benefits under part B—

(A) entitlement to have payment made on his behalf for all services described in section 1812 and section 1832 which are furnished to him by the health maintenance organization with which he is enrolled pursuant to subsection (e) of this section; and

(B) entitlement to have payment made by such health maintenance organization to him or on his behalf for (i) such emergency services (as defined in regulations), (ii) such urgently needed services (as defined in regulations) furnished to him during a period of temporary absence (as defined in regulations) from the geographic area served by the health maintenance organization with which he is enrolled, and (iii) such other services as may be determined, in accordance with subsection (f), to be services which the individual was entitled to have furnished by the health maintenance organization, as may be furnished to him by a physician, supplier, or provider of services, other than the health maintenance organization with which he is enrolled; and

(2) in the case of an individual who is not entitled to hospital insurance benefits under part A but who is enrolled for medical insurance benefits under part B, entitlement to have payment made for services described in paragraph (1), but only to the extent that such services are also described in section 1832.

(d) Subject to the provisions of subsection (e), every individual described in subsection (c) shall be eligible to enroll with any

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[231] See Public Health Service Act (P.L. 62-265), § 1312(a) and (b), in Vol. II,p. 1256.

[232] P.L. 95-292, § 5, deleted "Commissioner of Social Security" and substituted "Administrator of the Health Care Financing Administration", effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and by providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

[233] P.L. 94-460, § 201(a), amended subsection (b) in its entirety, effective with respect to contracts entered into on and after December 1, 1976. For subsection (b) as it formerly read, see Vol. II, p. 1782.

health maintenance organization (as defined in subsection (b)) which serves the geographic area in which such individual resides.

(e) An individual may enroll with a health maintenance organization under this section, and may terminate such enrollment, as may be prescribed by regulations.

(f) Any individual enrolled with a health maintenance organization under this section who is dissatisfied by reason of his failure to receive without additional cost to him any health service to which he believes he is entitled shall, if the amount in controversy is $100 or more, be entitled to a hearing before the Secretary to the same extent as is provided in section 205(b) and in any such hearing the Secretary shall make such health maintenance organization a party thereto. If the amount in controversy is $1,000 or more, such individual or health maintenance organization shall be entitled to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(g)(1) If the health maintenance organization provides its enrollees under this section only the services described in subsection (c), its premium rate or other charges for such enrollees shall not exceed the actuarial value of the deductible and coinsurance which would otherwise be applicable to such enrollees under part A and part B, if they were not enrolled under this section.

(2) If the health maintenance organization provides to its enrollees under this section services in addition to those described in subsection (c), election of coverage for such additional services shall be optional for such enrollees and such organization shall furnish such enrollees with information on the portion of its premium rate or other charges applicable to such additional services. The portion of its premium rate or other charges [234] applicable to the services described in subsection (c) shall [235] not exceed [236] the actuarial value of the deductible and coinsurance which would otherwise be applicable to such enrollees under part A and part B if they were not enrolled under this section [236].

(h)(1) Except as provided in paragraph (2), each health maintenance organization with which the Secretary enters into a contract under this section shall have an enrolled membership at least half of which consists of individuals who have not attained age 65.

(2) The Secretary may waive the requirement imposed in paragraph (1) for a period of not more than three years from the date a health maintenance organization first enters into an agreement with the Secretary pursuant to subsection (i), but only for so long as such organization demonstrates to the satisfaction of the Secretary by the submission of its plan for each year that it is making continuous efforts and progress toward compliance with the provisions of paragraph (1) within such three-year period.[237]

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[234] P.L. 93-233, § 18(n)(1), inserted "of its premium rate or other charges", effective with respect to services provided after June 30, 1973.

[235] P.L. 93-233, § 18(n)(2), deleted "may" and substituted "shall", effective with respect to services provided after June 30, 1973.

[236] P.L. 93-233, § 18(n)(3) and (4), deleted "(i)" and "less (ii) the actuarial value of other charges made in lieu of such deductible and coinsurance", effective with respect to services provided after June 30, 1973.

[237] P.L. 94-460, § 201(b), amended subsection (h) in its entirety, effective with respect to contracts entered into between the Secretary and health maintenance organizations under § 1876 on and after December 1, 1976. For subsection (h) as it formerly read, see Vol. II, p. 1782.

(i)(1) Subject to the limitations contained in subparagraphs (A) and (B) of paragraph (2), the Secretary is authorized to enter into a contract with any health maintenance organization which undertakes to provide, on an interim per capita prepayment basis, the services described in section 1832 (and section 1812, in the case of individuals who are entitled to hospital insurance benefits under part A) to individuals enrolled with such organization pursuant to subsection (e).

(2)(A) If the health maintenance organization (i) has a current enrollment of not less than 25,000 members on a prepaid capitation basis and has been the primary source of health care of at least 8,000 persons in each of the two years immediately preceding the contract year, or (ii) serves a nonurban geographic area, has a current enrollment of not less than 5,000 members on a prepaid capitation basis and has been the primary source of health care for at least 1,500 persons in each of the three years immediately preceding the contract year, the Secretary may enter into a risk sharing [237A] contract with such organization pursuant to which any savings, as determined pursuant to subsection (a)(3)(A), are shared between such organization and the Medicare Trust Funds in the manner prescribed in such subsection. For purposes of this subparagraph, a health maintenance organization shall be considered to serve a nonurban geographic area if it is located in a nonmetropolitan county (that is, a county with fewer than 50,000 inhabitants), or if it has at least one such county in its normal service area, or if it is located outside of a metropolitan area and its facilities are within reasonable travel distance (as defined by the Secretary) of fewer than 50,000 individuals. No health maintenance organization which has entered into a risk-sharing contract [237A] with the Secretary under this subparagraph and has voluntarily terminated such contract may again enter into such a contract.

(B) If the health maintenance organization does not meet the requirements of subparagraph (A), or if the Secretary is not satisfied that the health maintenance organization has the capacity to bear the risk of potential losses as determined under clause (ii) of subsection (a)(3)(A), or if the health maintenance organization meeting the requirements of subparagraph (A) so elects, or if an organization does not fully meet the requirements of section 1876(b) but has demonstrated to the satisfaction of the Secretary that it is making reasonable efforts to meet, and is developing the capability to fully meet, such requirements, and that it fully meets such basic requirements as the Secretary shall prescribe in regulations, the Secretary may, if he is otherwise satisfied that the health maintenance organization or other organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1861(v)) in the manner prescribed in subsection (a)(3)(B).

(3) Such contract may, at the option of such organization, provide that the Secretary (A) will reimburse hospitals and skilled nursing facilities for the reasonable cost (as determined under section 1861(v)) of services furnished to individuals enrolled with such

[237A] As in original.

organization pursuant to subsection (e), and (B) will deduct the amount of such reimbursement from payments which would otherwise be made to such organization. If a health maintenance organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1861(v)) unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(4) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the health maintenance organization involved as he may provide in regulations), if he finds that the organization (A) has failed substantially to carry out the contract, (B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or (C) no longer substantially meets the applicable conditions of subsection (b).

(5) The effective date of any contract executed pursuant to this subsection shall be specified in such contract pursuant to the regulations.

(6) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under such contract; and

(ii) shall have the right to audit and inspect any books and records of such health maintenance organization which pertain to services performed and determinations of amounts payable under such contract;

(B) shall provide that no reinsurance costs (other than costs with respect to out-of-area services and, in the case of an organization which has entered into a risk-sharing contract with the Secretary pursuant to paragraph (2)(A), the cost of providing any member with basic health services the aggregate value of which exceeds $5,000 in any year)[238], including any underwriting of risk relating to costs in excess of adjusted average per capita cost, as defined in clause (iii) of subsection (a)(3)(A), shall be allowed for purposes of determining payments authorized under this section; and

(C) shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary.

(j) The function vested in the Secretary by subsection (i) may be performed without regard to such provisions of law or of other

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[238] P.L. 94-460, § 201(c), deleted "(other than those with respect to out-of-area services)" and substituted "(other than costs with respect to out-of-area services and, in the case of an organization which has entered into a risk-sharing contract with the Secretary pursuant to paragraph (2)(A), the cost of providing any member with basic health services the aggregate value of which exceeds $5,000 in any year)", effective with respect to contracts entered into on and after December 1, 1976.

regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purposes of this title.

(k) Each health maintenance organization with which the Secretary enters into a contract under this section shall have an open enrollment period at least every year under which it accepts up to the limits of its capacity and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) in the order in which they apply for enrollment (unless to do so would result in failure to meet the requirements of subsection (h)) [238A] or would result in enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by such health maintenance organization.[239]

PENALTIES [240]

SEC. 1877. [42 U.S.C. 1395nn] (a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this title,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under this title, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both.

[238A] As in original.

[239] P.L. 94-460, § 201(d), added subsection (k), effective with respect to contracts entered into on and after December 1, 1976.

[240] P.L. 95-142, § 4(a), amended § 1877 in its entirety, effective with respect to acts occurring and statements or representations made on or after October 25, 1977. For § 1877 as it formerly read, see Vol. II, p. 1791.

(b)(1) Whoever knowingly and willfully [241] solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully [241] offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this title; and

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, or home health agency (as those terms are defined in section 1861), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Whoever accepts assignments described in section 1842(b)(3)(B)(ii) and knowingly, willfully, and repeatedly violates the term of such assignments specified in subclause (I) of such section, shall be guilty of a misdemeanor and upon conviction

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[241] P.L. 96-499, § 917, inserted "knowingly and willfully", effective December 5, 1980.

thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

PROVIDER REIMBURSEMENT REVIEW BOARD

SEC. 1878. [42 U.S.C. 1395oo] (a) Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the "Board") which shall be established by the Secretary in accordance with subsection (h), if—

(1) such provider—

(A) is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1816 as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this title for the period covered by such report,

(B) has not received such final determination from such intermediary on a timely basis after filing such report, where such report complied with the rules and regulations of the Secretary relating to such report, or

(C) has not received such final determination on a timely basis after filing a supplementary cost report, where such cost report did not so comply and such supplementary cost report did so comply,

(2) the amount in controversy is $10,000 or more, and

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1)(A) or with respect to appeals pursuant to paragraph (1)(B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

(b) The provisions of subsection (a) shall apply to any group of providers of services if each provider of services in such group would, upon the filing of an appeal (but without regard to the $10,000 limitation), be entitled to such a hearing, but only if the matters in controversy involve a common question of fact or interpretation of law or regulations and the amount in controversy is, in the aggregate, $50,000 or more.

(c) At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissable [242] under rules of evidence applicable to court procedure.

(d) A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including

[242] As in original. Should be "inadmissible".

revisions adverse tc the provider of services) even though such matters were not considered by the intermediary in making such final determination.

(e) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this title or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d), (e), and (f) of section 205 with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to title II.

(f)(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which such determination is rendered.[243] If a provider of services may obtain a hearing under subsection (a) and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination).[243] The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary.[243] If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing.[243] Such action shall be brought in the district court of the United States for the judicial district in which the provider is located or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5, United States Code [244], notwithstanding any other provisions in section 205.

(2) Where a provider seeks judicial review pursuant to paragraph (1), the amount in controversy shall be subject to annual interest beginning on the first day of the first month beginning after the 180-day period as determined pursuant to subsection (a)(3) and equal to the rate of return on equity capital established by regula-

[243] P.L. 96-499, § 955, added the preceding sentence, effective December 5, 1980.
[244] See 5 U.S.C. §§ 701-706 in Vol. II, p. 1118.

tion pursuant to section 1861(v)(1)(B) and in effect at the time the civil action authorized under paragraph (1) is commenced, to be awarded by the reviewing court in favor of the prevailing party.

(3) No interest awarded pursuant to paragraph (2) shall be deemed income or cost for the purposes of determining reimbursement due providers under this Act.[245]

(g) The finding of a fiscal intermediary that no payment may be made under this title for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1862 shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (f).

(h) The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of cost reimbursement, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS–18 in section 5332 of title 5, United States Code[246]. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

(i) The Board is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

LIMITATION ON LIABILITY OF BENEFICIARY WHERE MEDICARE CLAIMS ARE DISALLOWED

SEC. 1879. [42 U.S.C. 1395pp] (a) Where—

(1) a determination is made that, by reason of section 1862(a)(1) or (9), payment may not be made under part A or part B of this title for any expenses incurred for items or services furnished an individual by a provider of services or by another person pursuant to an assignment under section 1842(b)(3)(B)(ii), and

(2) both such individual and such provider of services or such other person, as the case may be, did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under such part A or part B,

then to the extent permitted by this title, payment shall, notwithstanding such determination, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this title), as though section 1862(a)(1) and section 1862(a)(9) did not apply. In each such case the Secretary shall

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[245] P.L. 93-484, § 3(a), amended subsection (f) in its entirety, effective with respect to cost reports of providers of services for accounting periods ending on or after June 30, 1973. For subsection (f) as it formerly read, see Vol. II, p. 1761.

[246] See 5 U.S.C. § 5332, in Vol. II, p. 1133.

notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such individual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section [247]), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services.

(b) In any case in which the provisions of paragraphs (1) and (2) of subsection (a) are met, except that such provider or such other person, as the case may be, knew, or could be expected to know, that payment for such services or items could not be made under such part A or part B, then the Secretary shall, upon proper application filed within such time as may be prescribed in regulations, indemnify the individual (referred to in such paragraphs), subject to the deductible and coinsurance provisions of this title, for any payments received from such individual by such provider or such other person, as the case may be, for such items or services. Any payments made by the Secretary as indemnification shall be deemed to have been made to such provider or such other person, as the case may be, and shall be treated as overpayments, recoverable from such provider or such other person, as the case may be, under applicable provisions of law. In each such case the Secretary shall notify such individual of the conditions under which indemnification is made and in the case of comparable situations arising thereafter with respect to such individual, he shall, by reason of such notice (or similar notices provided before the enactment of this section [247]), be deemed to have knowledge that payment cannot be made for such items or services.

(c) No payments shall be made under this title in any cases in which the provisions of paragraph (1) of subsection (a) are met, but both the individual to whom the items or services were furnished and the provider of service or other person, as the case may be, who furnished the items or services knew, or could reasonably have been expected to know, that payment could not be made for items or services under part A or part B by reason of section 1862(a)(1) or (a)(9).

(d) In any case arising under subsection (b) (but without regard to whether payments have been made by the individual to the provider or other person) or subsection (c), the provider or other person shall have the same rights that an individual has under section 1869(b) (when the determination is under part A) or section 1842(b)(3)(C) (when the determination is under part B) when the amount of benefit or payments is in controversy, except that such rights may, under prescribed regulations, be exercised by such provider or other person only after the Secretary determines that the individual will not exercise such rights under such sections.

(e) Where payment for inpatient hospital services or extended care services may not be made under part A of this title on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect

[247] October 30, 1972 (P.L. 92-603; 86 Stat. 1385)

to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1861(e) or (j) by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, professional standards review organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.[248]

INDIAN HEALTH SERVICE FACILITIES [249]

SEC. 1880. [42 U.S.C. 1395qq] (a) A hospital or skilled nursing facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act [250]), shall be eligible for payments under this title, notwithstanding sections 1814(c) and 1835(d), if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this title.

(b) Notwithstanding subsection (a), a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the conditions and requirements of this title which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after the date of the enactment of this section [251] an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this title), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted.

(c) Notwithstanding any other provision of this title, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this title. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) The annual report of the Secretary which is required by section 701 of the Indian Health Care Improvement Act [252] shall include (along with the matters specified in section 403 of such

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[248] P.L. 96-499, § 956(a), added subsection (e), effective January 1, 1981.

[249] P.L. 94-437, § 401(b), added § 1880, effective September 30, 1976.

See P.L. 94-437, § 401(c) with respect to appropriations, and § 401(d) with respect to equality of right to coverage, in Vol. II, p. 1495.

[250] See P.L. 94-437 § 4, in Vol. II, p. 1495.

[251] September 30, 1976. (P.L. 94-437; 90 Stat. 1400).

[252] See P.L. 94-437, § 701, in Vol. II, p. 1496.

Act [253]) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this title and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) and otherwise) toward the achievement of such compliance.

MEDICARE COVERAGE FOR END STAGE RENAL DISEASE PATIENTS [254]

SEC. 1881. [42 U.S.C. 1395rr] (a) The benefits provided by parts A and B of this title shall include benefits for individuals who have been determined to have end-stage renal disease as provided in section 226A, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this title, the type, duration, and scope of the benefit provided by parts A and B with respect to individuals who have been determined to have end-stage renal disease and who are entitled to such benefits without regard to section 226A shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b)(1) Payments under this title with respect to services, in addition to services for which payment would otherwise be made under this title, furnished to individuals who have been determined to have end-stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end-stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, and (B) payments to or on behalf of such individuals for home dialysis supplies and equipment. The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end-stage renal disease for which payments may be made under part B of this title, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this title, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement

[253] See P.L. 94-437, § 403, in Vol. II, p. 1496.

[254] P.L. 95-292, § 2, added § 1881, effective with respect to services, supplies, and equipment furnished after September 30, 1978, except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and by providers shall become effective with respect to a facility's or provider's first accounting period which begins after June 30, 1979, and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.

agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1861(v). Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1833(b).

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end-stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1861(v)), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals. Such regulations shall provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services (consistent with quality care), and shall include, to the extent determined feasible by the Secretary, a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.

(C) Such regulations, in the case of services furnished by proprietary providers and facilities may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1861(v)(1)(B).

(D) For purposes of section 1878, a renal dialysis facility shall be treated as a provider of services.

(3) With respect to payments for physicians' services furnished to individuals determined to have end-stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis for an aggregate of services provided over a period of time (as defined in regulations).

(4) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)).

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event shall such target rate exceed 70 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) For purposes of this title, the term "home dialysis supplies and equipment" means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end-stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

(8) For purposes of this title, the term "self-care home dialysis support services", to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(9) For purposes of this title, the term "self-care dialysis unit" means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(c)(1)(A) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.

(B) At least one patient representative shall serve as a member of each coordinating council and executive committee.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services referred to in section 1861(s)(2)(F), or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional medical services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of

interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient;

(B) developing criteria and standards relating to the quality and appropriateness of patient care; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction; and

(E) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals.

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network's goals and performance as reflected in the network's annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizations, shall provide such guidelines with respect to the planning and delivery of renal disease services as are necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be

so treated. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.

(d) Notwithstanding any provision to the contrary in section 226 any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this title with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this title), in such manner as may be prescribed by the Secretary in regulations, for all reasonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this title without regard to this subsection. Payments for postoperation recovery expenses shall be limited to the actual period of recovery.

(e)(1) Notwithstanding any other provision of this title, the Secretary may, pursuant to agreements with approved providers of services,[255] renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently,[256] reimburse such providers, facilities, and nonprofit entities [257] (without regard to the deductible and coinsurance provisions of this title) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

(2) An agreement under this subsection shall require that the provider, facility, or other entity will— [258]

(A) make the equipment available for use only by entitled individuals dialyzing at home;

(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

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[255] P.L. 96-499, § 957(a)(1), deleted "and" and substituted ",", effective December 5, 1980.
[256] P.L. 96-499, § 957(a)(2), inserted "and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently,", effective December 5, 1980.
[257] P.L. 96-499, § 957(a)(3), deleted "and facilities" and substituted ", facilities, and nonprofit entities", effective December 5, 1980.
[258] P.L. 96-499, § 957(a)(4), deleted "or facility will—" and substituted ", facility, or other entity will—", effective December 5, 1980.

(3) For purposes of this section, the term "supportive equipment" includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

(f)(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this title, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this title (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7) The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) The Secretary shall submit to the Congress on July [259] 1, 1979, and July [259] 1 of each year thereafter a report on the end stage renal disease program, including but not limited to—

(1) the number of patients, nationally and by renal disease network, on dialysis (self-dialysis or otherwise) at home and in facilities;

(2) the number of new patients entering dialysis at home and in facilities during the year;

(3) the number of facilities providing dialysis and the utilization rates of those facilities;

(4) the number of kidney transplants, by source of donor organ;

(5) the number of patients awaiting organs for transplant;

(6) the number of transplant failures;

(7) the range of costs of kidney acquisitions, by type of facility and by region;

(8) the number of facilities providing transplants and the number of transplants performed per facility;

(9) patient mortality and morbidity rates;

(10) the average annual cost of hospitalization for ancillary problems in dialysis and transplant patients, and drug costs for transplant patients;

(11) medicare payment rates for dialysis, transplant procedures, and physician services, along with any changes in such rates during the year and the reasons for those changes;

(12) the results of cost-saving experiments;

(13) the results of basic kidney disease research conducted by the Federal Government, private institutions, and foreign governments;

(14) information on the activities of medical review boards and other networks organizations; and

(15) estimated program costs over the next five years.

VOLUNTARY CERTIFICATION OF MEDICARE SUPPLEMENTAL HEALTH INSURANCE POLICIES [260]

SEC. 1882. [42 U.S.C. 1395ss] (a) The Secretary shall establish a procedure whereby medicare supplemental policies (as defined in subsection (g)(1)) may be certified by the Secretary as meeting minimum standards and requirements set forth in subsection (c). Such procedure shall provide an opportunity for any insurer to submit any such policy, and such additional data as the Secretary finds necessary, to the Secretary for his examination and for his certification thereof as meeting the standards and requirements set forth in subsection (c). Such certification shall remain in effect if the insurer files a notarized statement with the Secretary no later than June 30 of each year stating that the policy continues to meet such standards and requirements and if the insurer submits such additional data as the Secretary finds necessary to independently verify the accuracy of such notarized statement. Where the Secre-

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[259] P.L. 96-499, § 957(b), deleted "April" and substituted "July", effective December 5, 1980.

[260] P.L. 96-265, § 507(a), added § 1882, effective June 9, 1980, except that the provisions of paragraph (4) of § 1882(d) shall become effective on July 1, 1982.

The abbreviation "NAIC" as used in this section means National Association of Insurance Commissioners; see § 1882(g)(2)(A).

tary determines such a policy meets (or continues to meet) such standards and requirements, he shall authorize the insurer to have printed on such policy (but only in accordance with such requirements and conditions as the Secretary may prescribe) an emblem which the Secretary shall cause to be designed for use as an indication that a policy has received the Secretary's certification. The Secretary shall provide each State commissioner or superintendent of insurance with a list of all the policies which have received his certification.

(b)(1) Any medicare supplemental policy issued in any State which the Supplemental Health Insurance Panel (established under paragraph (2)) determines has established under State law a regulatory program that—

(A) provides for the application of standards with respect to such policies equal to or more stringent than the NAIC Model Standards (as defined in subsection (g)(2)(A));

(B) includes a requirement equal to or more stringent than the requirement described in subsection (c)(2); and

(C) provides for application of the standards and requirements described in subparagraphs (A) and (B) to all medicare supplemental policies (as defined in subsection (g)(1)) issued in such State,

shall be deemed (for so long as the Panel finds that such State regulatory program continues to meet the standards and requirements of this paragraph) to meet the standards and requirements set forth in subsection (c).

(2)(A) There is hereby established a panel (hereinafter in this section referred to as the "Panel") to be known as the Supplemental Health Insurance Panel. The Panel shall consist of the Secretary, who shall serve as the Chairman, and four State commissioners or superintendents of insurance, who shall be appointed by the President and serve at his pleasure. Such members shall first be appointed not later than December 31, 1980.

(B) A majority of the members of the Panel shall constitute a quorum, but a lesser number may conduct hearings.

(C) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Panel may require.

(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(E) Members of the Panel shall be allowed, while away from their homes or regular places of business in the performance of services for the Panel, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code [261].

(c) The Secretary shall certify under this section any medicare supplemental policy, or continue certification of such a policy, only if he finds that such policy—

(1) meets or exceeds (either in a single policy or, in the case of nonprofit hospital and medical service associations, in one or more policies issued in conjunction with one another) the NAIC Model Standards; and

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[261] See 5 U.S.C. § 5703 in Vol. II, p. 1136.

(2) can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 60 percent of the aggregate amount of premiums collected in the case of individual policies.

For purposes of paragraph (2), policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(d)(1) Whoever knowingly or willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the compliance of any policy with the standards and requirements set forth in subsection (c) or in regulations promulgated pursuant to such subsection, or with respect to the use of the emblem designed by the Secretary under subsection (a), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(2) Whoever falsely assumes or pretends to be acting, or misrepresents in any way that he is acting, under the authority of or in association with, the program of health insurance established by this title, or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(3)(A) Whoever knowingly sells a health insurance policy to an individual entitled to benefits under part A or enrolled under part B of this title, with knowledge that such policy substantially duplicates health benefits to which such individual is otherwise entitled, other than benefits to which he is entitled under a requirement of State or Federal law (other than this title), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(B) For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered as duplicative.

(C) Subparagraph (A) shall not apply with respect to the selling of a group policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations.

(4)(A) Whoever knowingly, directly or through his agent, mails or causes to be mailed any matter for a prohibited purpose (as determined under subparagraph (B)) shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(B) For purposes of subparagraph (A), a prohibited purpose means the advertising, solicitation, or offer for sale of a medicare supplemental policy, or the delivery of such a policy, in or into any State in which such policy has not been approved by the State commissioner or superintendent of insurance. For purposes of this paragraph, a medicare supplemental policy shall be deemed to be approved by the commissioner or superintendent of insurance of a State if—

(i) the policy has been certified by the Secretary pursuant to subsection (c) or was issued in a State with an approved regulatory program (as defined in subsection (g)(2)(B));

(ii) the policy has been approved by the commissioners or superintendents of insurance in States in which more than 30 percent of such policies are sold; or

(iii) the State has in effect a law which the commissioner or superintendent of insurance of the State has determined gives him the authority to review, and to approve, or effectively bar from sale in the State, such policy;

except that such a policy shall not be deemed to be approved by a State commissioner or superintendent of insurance if the State notifies the Secretary that such policy has been submitted for approval to the State and has been specifically disapproved by such State after providing appropriate notice and opportunity for hearing pursuant to the procedures (if any) of the State.

(C) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a medicare supplemental policy into a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy is mailed is located in such State on a temporary basis.

(D) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a duplicate copy of a medicare supplemental policy previously issued to the party to whom (or on whose behalf) such duplicate copy is mailed, if such policy expires not more than 12 months after the date on which the duplicate copy is mailed.[262]

(e) The Secretary shall provide to all individuals entitled to benefits under this title (and, to the extent feasible, to individuals about to become so entitled) such information as will permit such individuals to evaluate the value of medicare supplemental policies to them and the relationship of any such policies to benefits provided under this title.

(f)(1)(A) The Secretary shall, in consultation with Federal and State regulatory agencies, the National Association of Insurance Commissioners, private insurers, and organizations representing consumers and the aged, conduct a comprehensive study and evaluation of the comparative effectiveness of various State approaches to the regulation of medicare supplemental policies in (i) limiting marketing and agent abuse, (ii) assuring the dissemination of such information to individuals entitled to benefits under this title (and to other consumers) as is necessary to permit informed choice, (iii) promoting policies which provide reasonable economic benefits for

[262] P.L. 96-265, § 507(b), provides that the provisions of this paragraph (4) of § 1882(d) shall become effective July 1, 1982.

such individuals, (iv) reducing the purchase of unnecessary duplicative coverage, (v) improving price competition, and (vi) establishing effective approved State regulatory programs described in subsection (b).

(B) Such study shall also address the need for standards or certification of health insurance policies, other than medicare supplemental policies, sold to individuals eligible for benefits under this title.

(C) The Secretary shall, no later than January 1, 1982, submit a report to the Congress on the results of such study and evaluation, accompanied by such recommendations as the Secretary finds warranted by such results with respect to the need for legislative or administrative changes to accomplish the objectives set forth in subparagraphs (A) and (B), including the need for a mandatory Federal regulatory program to assure the marketing of appropriate types of medicare supplemental policies, and such other means as he finds may be appropriate to enhance effective State regulation of such policies.

(2) The Secretary shall submit to the Congress no later than July 1, 1982, and periodically as may be appropriate thereafter (but not less often than once every 2 years), a report evaluating the effectiveness of the certification procedure and the criminal penalties established under this section, and shall include in such reports an analysis of—

(A) the impact of such procedure and penalties on the types, market share, value, and cost to individuals entitled to benefits under this title of medicare supplemental policies which have been certified by the Secretary;

(B) the need for any change in the certification procedure to improve its administration or effectiveness; and

(C) whether the certification program and criminal penalties should be continued.

(g)(1) For purposes of this section, a medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to individuals who are entitled to have payment made under this title, which provides reimbursement for expenses incurred for services and items for which payment may be made under this title but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this title; but does not include any such policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations. For purposes of this section, the term "policy" includes a certificate issued under such policy.

(2) For purposes of this section:

(A) The term "NAIC Model Standards" means the "NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act", adopted by the

National Association of Insurance Commissioners on June 6, 1979, as it applies to medicare supplement [262A] policies.

(B) The term "State with an approved regulatory program" means a State for which the Panel has made a determination under subsection (b)(1).

(C) The State in which a policy is issued means—

(i) in the case of an individual policy, the State in which the policyholder resides; and

(ii) in the case of a group policy, the State in which the holder of the master policy resides.

(h) The Secretary shall prescribe such regulations as may be necessary for the effective, efficient, and equitable administration of the certification procedure established under this section. The Secretary shall first issue final regulations to implement the certification procedure established under subsection (a) not later than March 1, 1981.

(i)(1) No medicare supplemental policy shall be certified and no such policy may be issued bearing the emblem authorized by the Secretary under subsection (a) until July 1, 1982. On and after such date policies certified by the Secretary may bear such emblem, including policies which were issued prior to such date and were subsequently certified, and insurers may notify holders of such certified policies issued prior to such date using such emblem in the notification.

(2)(A) The Secretary shall not implement the certification program established under subsection (a) with respect to policies issued in a State unless the Panel makes a finding that such State cannot be expected to have established, by July 1, 1982, an approved State regulatory program meeting the standards and requirements of subsection (b)(1). If the Panel makes such a finding, the Secretary shall implement such program under subsection (a) with respect to medicare supplemental policies issued in such State, until such time as the Panel determines that such State has a program that meets the standards and requirements of subsection (b)(1).

(B) Any finding by the Panel under subparagraph (A) shall be transmitted in writing, not later than January 1, 1982, to the Committee on Finance of the Senate and to the Committee on Interstate and Foreign Commerce and the Committee on Ways and Means of the House of Representatives and shall not become effective until 60 days after the date of its transmittal to the Committees of the Congress under this subparagraph. In counting such days, days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation.

(j) Nothing in this section shall be construed so as to affect the right of any State to regulate medicare supplemental policies which, under the provisions of this section, are considered to be issued in another State.

[262A] As in original.

HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES [263]

SEC. 1883. [42 U.S.C. 1395tt] (a)(1) Any hospital (other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1861(e)) which has an agreement under section 1866 may (subject to subsection (b)) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

(2)(A) Notwithstanding any other provision of this title, payment to any hospital for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

(I) the number of patient-days during the year for which the services were furnished, and

(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the previous calendar year under the State plan (of the State in which the hospital is located) under title XIX to skilled nursing facilities located in the State and which meet the requirements specified in section 1902(a)(28), or, in the case of a hospital located in a State which does not have such a State plan, the average rate per patient-day paid for routine services during the previous calendar year under this title to skilled nursing facilities in such State.

(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(b) The Secretary may not enter into an agreement under this section with any hospital unless—

(1) except as provided under subsection (g), the hospital is located in a rural area and has less than 50 beds, and

(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act [264]) for the State in which the hospital is located.

(c) An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1866

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[263] P.L. 96-499, § 904(a)(1), added § 1883, effective on the date on which final regulations, promulgated by the Secretary to implement the section, are first issued; and those regulations shall be issued not later than June 1, 1981.

See P.L. 96-499, § 904(c), with respect to Secretary's report to Congress on hospital providers of long-term care services ("swing beds"), in Vol. II, p. 1737.

[264] See P.L. 62-265, § 1521, in Vol. II, p. 1261.

and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1866; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1866, or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1861(e). A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

(d) Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1866; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this title (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1866.

(e) During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement due for routine services from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine title XVIII reimbursement for routine hospital services.

(f) A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1861(j)(15). Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

(g) The Secretary may enter into an agreement under this section on a demonstration basis with any hospital which does not meet the requirement of subsection (b)(1), if the hospital otherwise meets the requirements of this section.

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS [1]

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[1] Title XIX of the Social Security Act is administered by the Health Care Financing Administration, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare).

Title XIX appears in the United States Code as §§ 1396–1396k, subchapter XIX, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title XIX are contained in chapter IV, title 42, and subtitle A, title 45, Code of Federal Regulations.

See Public Health Service Act (P.L. 62–265), § 1301(c)(3), with respect to the requirement that health maintenance organizations enroll individuals entitled to medical assistance under title XIX, in Vol. II, p. 1253.

See Public Health Service Act (P.L. 62–265), § 304(d)(4), with respect to study of cost of diseases and adverse effects on humans which are environmentally related, in Vol. II, p. 1228.

See Public Health Service Act (P.L. 62–265), § 328(d), with respect to report to Congress by Comptroller General on hospital-affiliated primary care centers, in Vol. II, p. 1231.

See P.L. 88–352 (Civil Rights Act of 1964), for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See P.L. 89–73, § 203 with respect to Federal agency consultation, and § 306(c) with respect to agreements with other agencies, in Vol. II, p. 1570.

See P.L. 90–248 (Social Security Amendments of 1967), § 234(c), with respect to nursing homes which do not meet all requirements of the State for licensure, in Vol. II, p. 1444.

See P.L. 90–575, § 507, with respect to exclusion from income and resources of grants and loans to undergraduate students for educational purposes under any program administered by the Commissioner of Education, in Vol. II, p. 1589.

See P.L. 90–577, §§ 2–403 and §§ 601–604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See P.L. 92–603, § 402, with respect to transitional administrative provisions related to the payment of benefits under title XVI of this act, in Vol. II, p. 1467.

See P.L. 93–66, § 212, with respect to mandatory minimum State supplementation of supplemental security income benefits, in Vol. II, p. 1470.

See P.L. 93–233, § 16, with respect to the basis of medicare payments for services provided by agencies and providers, in Vol. II, p. 1617.

See P.L. 93–510, §§ 2–13 with respect to simplification of joint funding, in Vol. II, p. 1622.

See P.L. 94–103, § 204, with respect to a study and report to Congress on standards and quality assurance mechanisms applicable to residential facilities and community agencies, in Vol. II, p. 1652.

See P.L. 94–182, § 107, with respect to grants for certain experiments and demonstration projects, in Vol. II, p. 1655.

See P.L. 94–241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

See P.L. 94–566, § 503, with respect to preservation of medicaid eligibility for individuals who cease to be eligible for supplemental security income benefits on account of cost-of-living increases in social security benefits, in Vol. II, p. 1672.

See P.L. 95–113, § 1428, with respect to nutritional status monitoring, in Vol. II, p. 1676.

See P.L. 95–142, § 18, with respect to report on home health and other in-home services, in Vol. II, p. 1677.

See P.L. 95–205, § 101, for the "Hyde Amendment" with respect to use of funds for abortions, in Vol. II, p. 1680.

See P.L. 95–224, §§ 2–10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

See P.L. 95–480, § 201, with respect to cutting volume of waste, fraud, and abuse in medicaid payments that are erroneous, in Vol. II, p. 1696.

See P.L. 95–626, § 606(a)(14) and (15), with respect to adolescent pregnancies and grant requirements in regard thereto, in Vol. II, p. 1710.

[2] This table of contents does not appear in the law.

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APPROPRIATION

SEC. 1901. [42 U.S.C. 1396] For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or [3] disabled individuals, whose income and resources are insufficient to meet the cost of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for medical assistance.[4]

STATE PLANS FOR MEDICAL ASSISTANCE [5]

SEC. 1902. [42 U.S.C. 1396a] (a) A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1903 are authorized by this title; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for

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[3] P.L. 93-233, § 13(a)(1), deleted "permanently and totally", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[4] See P.L. 94-437, § 402(b), (c), and (d) with respect to services provided to medicaid-eligible Indians and § 403 with respect to reports, in Vol. II, p. 1495.

[5] See P.L. 93-233, § 13(c), with respect to medicaid eligibility for individuals receiving mandatory State supplementary payments, in Vol. II, p. 1616.

See P.L. 96-499, § 914(b)(2), with respect to situations in which State legislation is needed for compliance with § 1902(a)(42), § 918(b)(2), with respect to situations in which State legislation is needed for compliance with § 1902(a)(43), and § 965(c)(2), with respect to situations in which State legislation is needed for compliance with § 1905(a)(17) and § 1905(m), in Vol. II, p. 1737.

medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan [6] [7], (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code [7] [8];

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; [9] or provide for the establishment or designation of a single State agency to administer or [9] to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under title I or XVI (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under title XVI, or by the agency or agencies ad-

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[6] P.L. 91-648, § 208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). See P.L. 91-648, § 208(a)(3)(D), in Vol. II, p. 1598. Functions of the Commission were transferred to the Director of the Office of Personnel Management under § 102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. § 1101 note), effective January 1, 1979.

[7] P.L. 95-559, § 14(a)(1), deleted "and" before "(B)" and inserted subparagraph (C), effective April 30, 1979, except that in the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the requirement added by this amendment, the amendment shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after November 1, 1978. See P.L. 95-559, § 14(a)(2), for the full statement of this effective date, in Vol. II, p. 1698.

[8] See 18 U.S.C. §§ 207 and 208, in Vol. II. p. 1162.

[9] P.L. 93-233, § 13(a)(2)(A), deleted "the plan," and substituted "or to supervise the administration of the plan;" and inserted "to administer or", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

ministering the supplemental security income program established under title XVI or the State plan approved under part A of title IV if the State is not eligible to participate in the State plan program established under title XVI [10];

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1864(a)), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services, and

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions;

(10) provide—

(A) for making medical assistance available to all individuals receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI; [11]

(B) that the medical assistance made available to any individual described in clause (A)—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and

(ii) shall not be less in amount, duration, or scope than the medical assistance made available to individuals not described in clause (A); and

(C) if medical assistance is included for any group of individuals who are not described in clause (A) and who do not meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under title XVI, as the case may be, as

[10] P.L. 93-233, § 13(a)(2)(B), added "if the State is eligible to participate in the State plan program established under title XVI, or by the agency or agencies administering the supplemental security income program established under title XVI or the State plan approved under part A of title IV if the State is not eligible to participate in the State plan program established under title XVI", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[11] See P.L. 96-272, § 310(b), concerning the requirement to make an election respecting certain veteran's benefits, in Vol. II, p. 1510.

determined in accordance with standards prescribed by the Secretary—

(i) for making medical assistance available to all individuals who would, except for income and resources, be eligible for aid or assistance under any such State plan or to have paid with respect to them supplemental security income benefits under title XVI, and who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical and remedial care and services, and

(ii) that the medical assistance made available to all individuals not described in clause (A) shall be equal in amount, duration, and scope;

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1905(a) to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of title XVIII to individuals eligible therefor (either pursuant to an agreement entered into under section 1843 or by reason of the payment of premiums under such title by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of title XVIII for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, and (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A); [12] [13]

(11) (A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, and (B) effective July 1, 1969, provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving

[12] P.L. 93-233, § 13(a)(3), amended paragraph (10) in its entirety, effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973. For paragraph (10) as it formerly read, see Vol. II, p. 1759.

[13] See P.L. 93-66, §§ 230-232, for provisions relating to medicaid, in Vol. II, p. 1473.

payments for part or all of the cost of plans or projects under title V, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under title V and which are included in the State plan approved under this section and (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to him under section 1903;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A)(i) for the inclusion of some institutional and some noninstitutional care and services, and

(ii) for the inclusion of home health services for any individual who, under the State plan, is entitled to skilled nursing facility services, and

(B) in the case of individuals receiving aid or assistance under any plan of the State [14] approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI [14], for the inclusion of at least the care and services listed in paragraphs (1) through (5) and (17) [15] of section 1905(a), and

(C) in the case of individuals not included under subparagraph (B) for the inclusion of at least—

(i) the care and services listed in paragraphs (1) through (5) and (17) [16] of section 1905(a) or

(ii)(I) the care and services listed in any 7 of the paragraphs numbered (1) through (17) [17] of such section and (II) in the event the care and services provided under the State plan include hospital or skilled nursing facility services, physicians' services to an individual in a hospital or skilled nursing facility during any period he is receiving hospital services from such hospital or skilled nursing facility services from such home [17A], and

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[14] P.L. 93-233, § 13(a)(4), deleted "the State's plan" and substituted "any plan of the State", and added ", or with respect to whom supplemental security income benefits are being paid under title XVI", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[15] P.L. 96-499, § 965(b)(1), deleted "clauses (1) through (5)" and substituted "paragraphs (1) through (5) and (17)", effective with respect to payments under this title of the Social Security Act for calendar quarters beginning July 1, 1981, or thereafter, unless the Secretary determines State legislation is required; in the latter case, see P.L. 96-499, § 965(c)(2) in Vol. II, p. 1741.

[16] P.L. 96-499, § 965(b)(2), deleted "clauses (1) through (5)" and substituted "paragraphs (1) through (5) and (17)", effective as indicated in footnote 15 of this title.

[17] P.L. 93-233, § 18(x)(1), deleted "(14)" and substituted "(16)", effective December 31, 1973. P.L. 96-499, § 965(b)(3), deleted "clauses numbered (1) through (16)", and substituted "paragraphs numbered (1) through (17)", effective as indicated in footnote 15 of this title.

[17A] As in original. Should be "facility".

(D)(i) [18] for payment (except where the State agency is subject to an order under section 1914) [19] of the reasonable cost of inpatient hospital services provided under the plan, as determined in accordance with methods and standards, consistent with section 1122, which shall be developed by the State and reviewed and approved by the Secretary and (after notice of approval by the Secretary) included in the plan, except that the reasonable cost of any such services as determined under such methods and standards shall not exceed the amount which would be determined under section 1861(v) as the reasonable cost of such services for purposes of title XVIII, except that in the case of hospitals reimbursed for services under part A of title XVIII in accordance with section 1814(b)(3), the plan must provide for payment of inpatient hospital services provided in such hospitals under the plan in accordance with the reimbursement system used under such section [20], and

(ii) for payment of the reasonable cost of inappropriate inpatient services (described in subsection (h)(1)) for which payment is provided only because of subsection (h) at the rate of payment for such services provided for under such subsection, and [21]

(E) for payment of the skilled nursing facility and intermediate care facility services provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each skilled nursing or intermediate care facility and periodic audits by the State of such reports; and [22]

(F) for payment for services described in section 1905(a)(2)(B) provided by a rural health clinic under the plan of 100 percent of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary may prescribe in regulations under section 1833(a)(3), or, in the case of services to which those regulations do not apply, on

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[18] P.L. 96-499, § 902(b)(1)(A), added "(i)", effective on the date on which final regulations, promulgated by the Secretary to implement this amendment, are first issued; and those regulations shall be issued not later than June 1, 1981.

[19] P.L. 96-499, § 905(a), added "(except where the State agency is subject to an order under section 1914)", effective December 5, 1980.

[20] P.L. 96-499, § 903(b), added ", except that in the case of hospitals reimbursed for services under part A of title XVIII in accordance with section 1814(b)(3), the plan must provide for payment of inpatient hospital services provided in such hospitals under the plan in accordance with the reimbursement system used under such section", effective December 5, 1980.

[21] P.L. 96-499, § 902(b)(1)(C), added clause (ii), effective on the date on which final regulations, promulgated by the Secretary to implement this amendment, are first issued; and those regulations shall be issued not later than June 1, 1981.

[22] P.L. 96-499, § 962(a), amended subparagraph (E) in its entirety, effective October 1, 1980. For subparagraph (E) as it formerly read, see Vol. II, p. 1839.

such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph; [23]

(14) effective January 1, 1973, provide that—

(A) in the case of individuals receiving aid or assistance under any plan of the State [24] approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI,[24] or who meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under title XVI, as the case may be, and individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A) [24]—

(i) no enrollment fee, premium, or similar charge, and no deduction, cost sharing, or similar charge with respect to the care and services listed in paragraphs (1) through (5), (7), and (17) [25] of section 1905(a), will be imposed under the plan, and

(ii) any deduction, cost sharing, or similar charge imposed under the plan with respect to other care and services will be nominal in amount (as determined in accordance with standards approved by the Secretary and included in the plan), and

(B) with respect to individuals (other than individuals with respect to whom there is being paid, or who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A)) [26] who are not receiving aid or assistance under any such State plan and with respect to whom supplemental security income benefits are not being paid

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[23] P.L. 95-210, § 2(c)(1), added subparagraph (F), effective with respect to medical assistance provided, under a State plan approved under title XIX, on and after July 1, 1978, unless the Secretary determines State legislation is required; in the latter case, see P.L. 95-210, § 2(f)(2), in Vol. II, p. 1681.

[24] P.L. 93-233, § 13(a)(5), deleted "a State plan" and substituted "any plan of the State"; added "or with respect to whom supplemental security income benefits are being paid under title XVI,"; deleted "one of such State plans which is appropriate" and substituted "appropriate State plan, or the supplemental security income program under title XVI, as the case may be, and individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A)"; effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[25] P.L. 96-499, § 965(b)(4), deleted "clauses (1) through (5) and (7)" and substituted "paragraphs (1) through (5), (7), and (17)", effective with respect to payments under this title of the Social Security Act for calendar quarters beginning July 1, 1981, or thereafter, unless the Secretary determines State legislation is required; in the latter case, see P.L. 96-499, § 965(c)(2), in Vol. II, p. 1741.

[26] P.L. 93-233, § 13(a)(6)(A), added the preceding parenthetical remark, effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

under title XVI [27] and who do not meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under title XVI, as the case may be,[28] [29]—

(i) there may [30] be imposed an enrollment fee, premium, or similar charge which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income, and

(ii) any deductible, cost-sharing, or similar charge imposed under the plan will be nominal;

(15) in the case of eligible individuals 65 years of age or older who are covered by either or both of the insurance programs established by title XVIII, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such title is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State [31] approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI [31], based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for

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[27] P.L. 93-233, § 13(a)(6)(B), added "and with respect to whom supplemental security income benefits are not being paid under title XVI", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[28] P.L. 93-233, § 13(a)(6)(C), deleted "the one of such State plans which is appropriate" and substituted "the appropriate State plan, or the supplemental security income program under title XVI, as the case may be," , effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973. Comma after "as the case may be" should be deleted.

[29] P.L. 93-233, § 13(a)(6)(D), deleted "or who, after December 31, 1973, are included under the State plan for medical assistance pursuant to section 1902(a)(10)(B) approved under title XIX", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[30] P.L. 93-368, § 9(a), deleted "shall" and substituted "may", effective January 1, 1973.

[31] P.L. 93-233, § 13(a)(7)(A), deleted "the State's plan" and substituted "any plan of the State" and added ", and with respect to whom supplemental security income benefits are not being paid under title XVI", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

income and resources [32], be eligible for aid or assistance in the form of money payments under any plan of the State [33] approved under title I, X, XIV, or XVI, or part A of title IV, or to have paid with respect to him supplemental security income benefits under title XVI [33]) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits [34], (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under title XVI),[35] is blind or permanently and totally disabled, or is blind or disabled as defined in section 1614 (with respect to States which are not eligible to participate in such program) [35]; and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law;

(18) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 21 or (with respect to States eligible to participate in the State program established under title XVI),[35] is blind or permanently and totally disabled, or is blind or disabled as defined in section 1614 (with respect to States which are not eligible to participate in such program) [35] of any medical assistance correctly paid on behalf of such individual under the plan;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be

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[32] P.L. 93-233, § 13(a)(7)(B), deleted "if he met the requirements as to need" and substituted "except for income and resources", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[33] P.L. 93-233, § 13(a)(7)(C), deleted "a State plan" and substituted "any plan of the State" and added ", or to have paid with respect to him supplemental security income benefits under title XVI", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[34] P.L. 93-233, § 13(a)(7)(D), deleted "and amount of such aid or assistance under such plan" and substituted "such aid, assistance, or benefits", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[35] P.L. 93-233, § 13(a)(8), added "(with respect to States eligible to participate in the State program established under title XVI)," and ", or is blind or disabled as defined in section 1614 (with respect to States which are not eligible to participate in such program)", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodical [36] determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 3(a)(4)(A)(i) and (ii), section 603(a)(1)(A)(i) and (ii),[37] or section 1603(a)(4)(A)(i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing facilities [38], and other alternatives to care in public institutions for mental diseases;

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[36] As in original. Should be "periodic".

[37] P.L. 93-233, § 13(a)(9), added ", section 603(a)(1)(A)(i) and (ii),", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973. As in original; reference to section 603 should be deleted as that section has been repealed.

[38] P.L. 93-233, § 18(x)(4), deleted "nursing homes" and substituted "nursing facilities", effective December 31, 1973.

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) except in the case of Puerto Rico, the Virgin Islands, and Guam,[39] provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services; and a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or paragraph (1) or (10) solely by reason of the fact that the State (or any political subdivision thereof) has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic [40] [41];

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing facilities [42], home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this Act, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this Act, and (C) to provide information needed to determine payments due under this Act on account of care and services furnished to individuals;

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[39] P.L. 94-48, § 2, added "except in the case of Puerto Rico, the Virgin Islands, and Guam,", effective July 1, 1975.

[40] P.L. 95-210, § 2(c)(2), added ", or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic", effective (except as otherwise provided in P.L. 95-210, § 2(f)(2), in Vol. II, p. 1681) with respect to medical assistance provided on and after July 1, 1978, under a State plan approved under title XIX of the Act.

[41] See P.L. 94-241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

[42] P.L. 93-233, § 18(x)(4), deleted "nursing homes" and substituted "nursing facilities", effective December 31, 1973.

(25) provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17)(B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(26) effective July 1, 1969, provide (A) for a regular program of medical review (including medical evaluation) of each patient's need for skilled nursing facility care or (in the case of individuals who are eligible therefor under the State plan) need for care in a mental hospital, a written plan of care, and, where applicable, a plan of rehabilitation prior to admission to a skilled nursing facility; (B) for periodic inspections to be made in all skilled nursing facilities and mental institutions (if the State plan includes care in such institutions) within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel, or, in the case of skilled nursing facilities, composed of physicians or registered nurses and other appropriate health and social service personnel [43] of (i) the care being provided in such nursing facilities [44] (and mental institutions, if care therein is provided under the State plan) to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular nursing facilities [44] (or institutions) to meet the current health needs and promote the maximum physical well-being of patients receiving care in such homes [44A] (or institutions), (iii) the necessity and desirability of the continued placement of such patients in such nursing facilities [44] (or institutions), and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections together with any recommendations to the State agency administering or supervising the administration of the State plan;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and

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[43] P.L. 95-142, § 20(b), added ", or, in the case of skilled nursing facilities, composed of physicians or registered nurses and other appropriate health and social service personnel". For effective date, see P.L. 95-142, § 20(c), in Vol. II, p. 1678.

[44] P.L. 93-233, § 18(x)(4), deleted "nursing homes", and substituted "nursing facilities", effective December 31, 1973.

[44A] As in original. Should be "facilities".

(B) to furnish the State agency or the Secretary [45] with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary [45] may from time to time request;

(28) provide that any skilled nursing facility receiving payments under such plan must satisfy all of the requirements contained in section 1861(j), except that the exclusion contained therein with respect to institutions which are primarily for the care and treatment of mental diseases and tuberculosis shall not apply for purposes of this title;

(29) include a State program which meets the requirements set forth in section 1908, for the licensing of administrators of nursing homes;

(30) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent with efficiency, economy, and quality of care;

(31) provide (A) for a regular program of independent professional review (including medical evaluation of each patient's need for intermediate care) and a written plan of service prior to admission or authorization of benefits in an intermediate care facility as determined under regulations of the Secretary; (B) for periodic on-site inspections to be made in all such intermediate care facilities (if the State plan includes care in such institutions) within the State by one or more independent professional review teams (composed of physicians or registered nurses and other appropriate health and social service personnel) of (i) the care being provided in such intermediate care facilities to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular intermediate care facilities to meet the current health needs and promote the maximum physical well-being of patients receiving care in such facilities, (iii) the necessity and desirability of the continued placement of such patients in such facilities, and (iv) the feasibility of meeting their health care needs through alternative institutional or non-institutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections, together with any recommendations to the State agency administering or supervising the administration of the State plan;

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

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[45] P.L. 95-142, § 9, added "or the Secretary", effective October 25, 1977.

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service; and

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment; [46]

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the penultimate sentence [47] of this subsection; and

(B) that the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1864(a), or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering or supervising the administration of the plan approved under this title the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan, except that, if the Secretary has cause to

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[46] P.L. 95-142, § 2(a)(3), amended paragraph (32) in its entirety, effective with respect to care and services furnished on or after October 25, 1977. For paragraph (32) as it formerly read, see Vol. II, p. 1792.

[47] P.L. 93-233, § 18(x)(2), deleted "last sentence" and substituted "penultimate sentence", effective December 31, 1973.

question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation [48];

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) [49] for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished;

(35) provide that any disclosing entity (as defined in section 1124(a)(2)) receiving payments under such plan complies with the requirements of section 1124; [50]

(36) [51] provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this title, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program [52];

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[48] P.L. 96-499, § 916(b)(1)(B), added ", except that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation", effective December 5, 1980.

[49] P.L. 93-233, § 18(o), added "(or application was made on his behalf in the case of a deceased individual)", effective July 1, 1973.

[50] P.L. 96-499, § 912(b), amended paragraph (35) in its entirety, effective December 5, 1980. For paragraph (35) as it formerly read, see Vol. II, p. 1839.

[51] P.L. 93-233, § 18(x)(3), redesignated paragraph (37) (as added by P.L. 92-603, § 299D(b); there was no prior paragraph (36)) as paragraph (36), effective December 31, 1973.

[52] P.L. 95-142, § 2(b)(1), added this paragraph (37), effective for calendar quarters beginning on and after July 1, 1978, with respect to State plans approved under title XIX.

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, respectively, (A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor [53];

(39) provide that the State agency shall bar any specified individual from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1128, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual during such period; [54]

(40) require each health services facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1121(a) to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization [55];

(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary of such action; [56]

(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part [56A], and (C) for payment of such proportion of costs of each

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[53] P.L. 95-142, § 3(c)(1), added paragraph (38), effective January 1, 1978.
See Public Health Service Act (P.L. 62-265), § 1318, with respect to disclosure of financial information required to be supplied under this paragraph, in Vol. II, p. 1257.

[54] P.L. 96-499, § 913(c), amended paragraph (39) in its entirety, effective December 5, 1980. For paragraph (39) as it formerly read, see Vol. II, p. 1839.

[55] P.L. 95-142, § 19(b)(2), added paragraph (40). For the effective date, see P.L. 95-142, § 19(c)(2), in Vol. II, p. 1677.

[56] P.L. 96-272, § 308(c)(3), added paragraph (41), effective June 17, 1980.

[56A] As in original. Should specify reference intended.

such common audit as is determined under methods specified by the Secretary under section 1129(a); and [57]

(43) if the State plan makes provision for payment to a physician for laboratory services the performance of which such physician (or any other physician with whom he shares his practice) did not personally perform or supervise, include provision to insure that payment under the State plan for such laboratory services not exceed the payment authorized for such services by section 1842(h) [58]

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X (or title XVI, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under title I (or title XVI, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under title X (or title XVI, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title (except for purposes of paragraph (10)). For purposes of paragraphs (9)(A), (29), (31), and (33), and of section 1903(i)(4), the terms "skilled nursing facility" and "nursing home [58A]" do not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV and who for such month was entitled to monthly insurance benefits under title II shall for purposes of this title only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under title II resulting from enactment of Public Law 92-336 [59] not been applicable to such individual.[60]

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[57] P.L. 96-499, § 914(b)(1)(C), added paragraph (42), effective with respect to medical assistance provided, under an approved State plan, on and after April 1, 1981, unless the Secretary determines that legislation is required; in the latter case, see P.L. 96-499, § 914(b)(2)(B), in Vol. II, p. 1737.

[58] P.L. 96-499, § 918(b)(1)(C), added paragraph (43), effective with respect to medical assistance provided, under an approved State plan, on and after July 1, 1981, unless the Secretary determines that legislation is required; in the latter case, see P.L. 96-499, § 918(b)(2)(B), in Vol. II, p. 1738.

[58A] As in original. Should be "nursing facility".

[59] P.L. 92-336 provided monthly benefit rate increases for (1) old-age, survivors, and disability insurance beneficiaries, and (2) individuals age 72 or over receiving payments under § 228 of the Social Security Act.

[60] P.L. 94-48, § 1, added this paragraph, effective July 1, 1975.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement.[61]

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) effective July 1, 1967, any age requirement which excludes any individual who has not attained the age of 21 and is or would, except for the provisions of section 406(a)(2), be a dependent child under part A of title IV; or

(3) any residence requirement which excludes any individual who resides in the State; or

(4) any citizenship requirement which excludes any citizen of the United States.

(c) Notwithstanding subsection (b), the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this title, attributable to medical needs) provided for eligible individuals under a plan of such State approved under title I, X, XIV, or XVI, or part A of title IV.

[(d) Repealed.[62]]

(e) Notwithstanding any other provision of this title, effective January 1, 1974, each State plan approved under this title must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of title IV in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from, employment, shall, while a member of such family is employed, remain eligible for assistance under the plan approved under this title (as though the family was receiving aid under the plan approved under part A of title IV) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of title IV because of income and resources or hours of work limitations contained in such plan.[63]

(f) Notwithstanding any other provision of this title, except as provided in subsection (e), no State not eligible to participate in the State plan program established under title XVI [64] shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of title XVI) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medi-

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[61] P.L. 95-142, § 2(b)(1)(D), added this paragraph, effective for calendar quarters beginning on and after July 1, 1978, with respect to State plans approved under title XIX.

[62] P.L. 92-603, § 231, effective October 30, 1972.

[63] P.L. 93-233, § 18(q), amended subsection (e) in its entirety, effective December 31, 1973. For subsection (e) as it formerly read, see Vol. II, p. 1760.

[64] P.L. 93-233, § 13(a)(10)(A), added "not eligible to participate in the State plan program established under title XVI", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

cal assistance approved under this title and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1903(f) (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual [65], and incurred expenses for medical care as recognized under State law [66]) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to clause (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under clause (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under clause (10)(A), or (2) an eligible individual or eligible spouse, as defined in title XVI, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under clause (10)(C) of that subsection.[67] In States which do not provide medical assistance to individuals pursuant to clause (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under clause (10)(A) of that subsection.[67]

[(g) Repealed.[68]]

(h)(1) In any case in which a hospital provides inpatient services to an individual that would constitute skilled nursing facility services if provided by a skilled nursing facility or that would constitute intermediate care facility services if provided by an intermediate care facility and a Professional Standards Review Organization (or, in the absence of such a qualified organization, an organization or agency with review responsibility as is otherwise provided for under part A of title XI) determines that inpatient hospital services for the individual are not medically necessary but skilled nursing facility services or intermediate care facility services, respectively, for the individual are medically necessary and such type of facility services are not otherwise available to the individual (as

[65] P.L. 93-233, § 13(a)(10)(B), deleted "such individual's payment under title XVI" and substituted "any supplemental security income payment and State supplementary payment made with respect to such individual", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[66] P.L. 93-233, § 13(a)(10)(C), deleted "as defined in section 213 of the Internal Revenue Code of 1954" and substituted "as recognized under State law", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[67] P.L. 93-233, § 13(a)(10)(D), added the preceding sentence, effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[68] P.L. 96-499, § 913(d), repealed subsection (g), effective December 5, 1980. For subsection (g) as it formerly read, see Vol. II, p. 1839.

determined in accordance with criteria established by the Secretary) at the time of such determination, payment for inpatient hospital services shall continue to be made under the State plan approved under this title at the payment rate described in paragraph (2) for such type of services during the period in which—

(A) such skilled nursing facility services or intermediate care facility services (as the case may be) for the individual are medically necessary and not otherwise available to the individual (as so determined),

(B) inpatient hospital services for the individual are not medically necessary, and

(C) the individual is entitled to receive medical assistance with respect to such facility services under the State plan,

except that if the Secretary determines that the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more, such payment shall be made (during such period) on the same basis as otherwise used under the State's plan for payments for providing inpatient hospital services.

(2)(A) Except as provided in subparagraph (B), the payment rate referred to in paragraph (1), in the case of skilled nursing facility services or intermediate care facility services, is the estimated adjusted State-wide average rate per patient-day paid for such respective type of services provided under the State plan.

(B) If a hospital has a unit which is a skilled nursing facility or intermediate care facility, the payment rate referred to in paragraph (1), in the case of inpatient services which constitute skilled nursing facility services or intermediate care facility services, is a rate equal to the lesser of the rate described in subparagraph (A) or the allowable costs in effect under the State plan for such type of inpatient services provided to patients of such unit.

(3) Any day on which an individual receives inpatient services for which payment is made under this subsection shall, for purposes of this Act (other than this subsection), be deemed to be a day on which the individual received inpatient hospital services.

(4) For the purpose of determining the occupancy rate with respect to hospitals under paragraph (2)—

(A) public hospitals under common ownership may elect (with the approval of the Secretary) to be treated as a single hospital, and

(B) beginning two years after the date this subsection is first applied with respect to a hospital, the Secretary, to the extent feasible, shall not treat as an inpatient an individual with respect to whom payment is made to the hospital only because of this subsection or section 1861(v)(1)(G).[69]

(i)(1) In addition to any other authority under State law, where a State determines that a skilled nursing facility or intermediate care facility which is certified for participation under its plan no longer substantially meets the provisions of section 1861(j) or section 1905(c), respectively, and further determines that the facility's deficiencies—

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[69] P.L. 96-499, § 902(b)(2), added subsection (h), effective on the date on which final regulations, promulgated by the Secretary to implement this amendment, are first issued; and those regulations shall be issued not later than June 1, 1981.

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility's certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, provide

that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the provisions of section 1861(j) or section 1905(c) (as the case may be), to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the provisions of section 1861(j) or section 1905(c) (as the case may be), or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.[70]

(j)(1) Notwithstanding any other provision of this title, an individual who would otherwise be eligible for medical assistance under the State plan approved under this title may be denied such assistance if such individual would not be eligible for such medical assistance but for the fact that he disposed of resources for less than fair market value. If the State plan provides for the denial of such assistance by reason of such disposal of resources, the State plan shall specify a procedure for implementing such denial which, except as provided in paragraph (2), is not more restrictive than the procedure specified in section 1613(c) of this Act.

(2) In any case where the uncompensated value of disposed of resources exceeds $12,000, the State plan may provide for a period of ineligibility which exceeds 24 months. If a State plan provides for a period of ineligibility exceeding 24 months, such plan shall provide for the period of ineligibility to bear a reasonable relationship to such uncompensated value.

(3) In any case where an individual is ineligible for medical assistance under the State plan solely because of the applicability to such individual of the provisions of section 1613(c), the State plan may provide for the eligibility of such individual for medical assistance under the plan if such individual would be so eligible if

[70] P.L. 96-499, § 916(b)(1)(A), added subsection (i), effective December 5, 1980.

the State plan requirements with respect to disposal of resources applicable under paragraphs (1) and (2) of this subsection were applied in lieu of the provisions of section 1613(c).[71]

PAYMENT TO STATES

SEC. 1903. [42 U.S.C. 1396b] (a) From the sums appropriated therefor, the Secretary (except as otherwise provided in this section [72]) shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b), subject to subsections (g), (h), and (j) [73] of this section) of the total amount expended during such quarter as medical assistance under the State plan (including expenditures for premiums under part B of title XVIII, for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A) [74], and, except in the case of individuals sixty-five years of age or older and disabled individuals entitled to hospital insurance benefits under title XVIII [75] who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof); plus

(2) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency; plus

(3) an amount equal to—

(A)(i) 90 per centum of so much of the sums expended during such quarter as are attributable to the design, development, or installation of such mechanized claims processing and information retrieval systems as the Secretary

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[71] P.L. 96-611, § 5(b), added subsection (j), effective on, and applicable to services furnished on or after, July 1, 1981.

[72] P.L. 93-233, § 18(x)(5), deleted "and section 1117", effective December 31, 1973.

[73] P.L. 96-499, § 905(b), deleted "and (h)", and substituted ", (h), and (j)", effective December 5, 1980.

[74] P.L. 93-233, § 13(a)(11), deleted "recipients of money payments under a State plan approved under title I, X, XIV, or XVI, or part A of title IV" and substituted "eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A)", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[75] P.L. 93-233, § 18(r)(1), added "and disabled individuals entitled to hospital insurance benefits under title XVIII", effective December 31, 1973.

determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of title XVIII, including the State's share of the cost of installing such a system to be used jointly in the administration of such State's plan and the plan of any other State approved under this title, and

(ii) 90 per centum of so much of the sums expended during any such quarter in the fiscal year ending June 30, 1972, or the fiscal year ending June 30, 1973, as are attributable to the design, development, or installation of cost determination systems for State-owned general hospitals (except that the total amount paid to all States under this clause for either such fiscal year shall not exceed $150,000), and

(B) 75 per centum of so much of the sums expended during such quarter as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under a contract with the State) of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision for prompt written notice to each individual who is furnished services covered by the plan, or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than confidential services) [76] so covered, the name of the person or persons furnishing the services, the date or dates on which the services were furnished, and the amount of the payment or payments made under the plan on account of the services; plus

(4) an amount equal to 100 per centum of the sums expended with respect to costs incurred [77] during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) which are attributable to compensation or training of personnel (of the State agency or any other public agency) responsible for inspecting public or private institutions (or portions thereof) providing long-term care to recipients of medical assistance to determine whether such institutions comply with health or safety standards applicable to such institutions under this Act; plus [78]

(5) [78] an amount equal to 90 per centum of the sums expended during such quarter [79] which are attributable to the offer-

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[76] P.L. 95-142, § 10, deleted "of the specific services" and substituted ", or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than confidential services)", effective with respect to calendar quarters beginning after October 25, 1977.

[77] P.L. 93-233, § 18(s), added "with respect to costs incurred", effective December 31, 1973.

[78] P.L. 92-603, § 249B, redesignated paragraph (4) as paragraph (5) and inserted a new paragraph (4), effective for the period beginning October 1, 1972, and ending June 30, 1974.

P.L. 93-368, § 8, effective August 7, 1974, extended that effective date through June 30, 1977.

P.L. 95-83, § 309(b), effective August 1, 1977, extended that effective date through September 30, 1980.

[79] P.L. 93-233, § 18(t), deleted "(as found necessary by the Secretary for the proper and efficient administration of the plan)", effective December 31, 1973.

ing, arranging, and furnishing (directly or on a contract basis) of family planning services and supplies;

(6) subject to subsection (b)(3), an amount equal to—

(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

(B) 75 per centum of the sums expended during each succeeding calendar quarter,

with respect to costs incurred [80] during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q)); plus [81]

(7) [81] an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b)(1) [82] Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State for any quarter beginning after December 31, 1969, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over and disabled individuals entitled to hospital insurance benefits under title XVIII [83] which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of title XVIII, other than amounts expended under provisions of the plan of such State required by section 1902(a)(34) [84].

(2) [82] For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

(3) The amount of funds which the Secretary is otherwise obligated to pay a State during a quarter under subsection (a)(6) may not exceed the higher of—

(A) $125,000, or

(B) one-quarter of 1 per centum of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State's plan under this title.[85]

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[80] P.L. 96-499, § 963, deleted "an amount equal to 90 per centum of the sums expended during each quarter beginning on or after October 1, 1977, and ending before October 1, 1980, with respect to costs incurred" and substituted "an amount equal to—" and all that follows through "with respect to costs incurred", effective December 5, 1980.

[81] P.L. 95-142, § 17(a), redesignated paragraph (6) as paragraph (7), and added a new paragraph (6), effective with respect to calendar quarters beginning after September 30, 1977.

[82] P.L. 93-233, § 18(x)(6), redesignated paragraphs (2) and (3) as paragraphs (1) and (2), respectively, effective December 31, 1973.

P.L. 92-603, § 295, repealed the former paragraph (1), effective October 30, 1972.

[83] P.L. 93-233, § 18(r)(2), added "and disabled individuals entitled to hospital insurance benefits under title XVIII", effective December 31, 1973.

[84] P.L. 93-233, § 18(u), inserted ", other than amounts expended under provisions of the plan of such State required by section 1902(a)(34)", effective July 1, 1973.

[85] P.L. 95-142, § 17(b), added paragraph (3), effective October 25, 1977.

[(c) Repealed.[87]]

(d)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b)[88] for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection. Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1902(a)(25).

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(5) In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1116(d), and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this title, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination (but not to exceed a period of twelve months with respect to disallowances made prior to October 1, 1981, or six months with respect to disallowances made thereafter) at a rate

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[87] P.L. 93-233, § 18(y)(1)(A), deleted subsection (c), effective December 31, 1973. For subsection (c) as it formerly read, see Vol. II, p. 1760.

[88] P.L. 93-233, § 18(y)(1)(B), deleted "(a), (b), and (c)" and substituted "(a) and (b)", effective December 31, 1973.

(determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.[89]

[(e) Repealed.[90]]

(f) (1)(A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

(B)(i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of title IV of this Act.

(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes.

(C) The total amount of any applicable income limitation determined under subparagraph (B) shall, if it is not a multiple of $100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of $100 or such other amount, as the case may be.

(2) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise) incurred by such family for medical care or for any other type of remedial care recognized under State law.

(3) For purposes of paragraph (1)(B), in the case of a family consisting of only one individual, the "highest amount which would ordinarily be paid" to such family under the State's plan approved under part A of title IV of this Act shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources) consisting of one person if such plan (without regard to section 408) provided for aid to such a family.

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual—

(A) who is receiving aid or assistance under any plan of the State approved under title I, X, XIV or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or

(B) who is not receiving such aid or assistance, and with respect to whom such benefits are not being paid, but (i) is eligible to receive such aid or assistance, or to have such

[89] P.L. 96-499, § 961(a), added paragraph (5), effective with respect to expenditures for services furnished on or after October 1, 1980.

[90] P.L. 92-603, § 230, effective October 30, 1972.

benefits paid with respect to him, or (ii) would be eligible to receive such aid or assistance, or to have such benefits paid with respect to him if he were not in a medical institution, or

(C) with respect to whom there is being paid, or who is eligible, or would be eligible if he were not in a medical institution, to have paid with respect to him, a State supplementary payment and is eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), but only if the income of such individual (as determined under section 1612, but without regard to subsection (b) thereof) does not exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1),

at the time of the provision of the medical assistance giving rise to such expenditure.[91]

(g)(1) Subject to paragraph (3), with [92] respect to amounts paid for the following services furnished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1876), the Federal medical assistance percentage shall be decreased as follows: After an individual has received care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on 90 days (whether or not such days are consecutive), during any fiscal year, which for purposes of this section means the four calendar quarters ending with June 30, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual in the same fiscal year shall be decreased by a per centum thereof (determined under paragraph (5)) [92] unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services (including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—

(A) in each case for which payment is made under the State plan, a physician certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and recertifies, where such services are furnished over a period of time, in such cases, at least every 60 days, and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be

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[91] P.L. 93-233, § 13(a)(12), amended paragraph (4) in its entirety, effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973. For paragraph (4) as it formerly read, see Vol. II, p. 1760.

[92] P.L. 95-142, § 20(a), deleted "With" and substituted "Subject to paragraph (3), with", and deleted "33⅓ per centum thereof" and substituted "a per centum thereof (determined under paragraph (5))". For the effective date, see P.L. 95-142, § 20(c), in Vol. II, p. 1678.

given on an inpatient basis because the individual needs or needed such services; and

(B) in each such case, such services were furnished under a plan established and periodically reviewed and evaluated by a physician;

(C) such State has in effect a continuous program of review of utilization pursuant to section 1902(a)(30) whereby each admission is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved; and the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 per centum of all admissions and must be of sufficient size to serve the purpose of (i) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (ii) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted; and [93]

(D) such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to section 1902(a)(26) and (31) whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams.

In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1812.

(2) The Secretary shall, as part of his validation procedures under this subsection, conduct timely [94] sample onsite surveys of private and public institutions in which recipients of medical assistance may receive care and services under a State plan approved under this title, and his findings with respect to such surveys (as well as the showings of the State agency required under this subsection) shall be made available for public inspection.

(3)(A) No reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under this subsection shall take effect—

(i) if such reduction is due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning before January 1, 1977;

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[93] P.L. 94-182, § 110(a), amended subparagraph (C) in its entirety, effective April 1, 1976. For subparagraph (C) as it formerly read, see Vol. II, p. 1775.

[94] P.L. 95-142, § 20(a)(3), added "timely". For effective date, see P.L. 95-142, § 20(c), in Vol. II, p. 1678.

(ii) before January 1, 1978;

(iii) unless a notice of such reduction has been provided to the State at least 30 days before the date such reduction takes effect; or

(iv) due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning after September 30, 1977, unless notice of such reduction has been provided to the State no later than the first day of the fourth calendar quarter following the calendar quarter with respect to which such showing was made.

(B) The Secretary shall waive application of any reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under paragraph (1) because a showing by the State, made under such paragraph with respect to a calendar quarter ending after January 1, 1977, and before January 1, 1978 [95], is determined to be either unsatisfactory under such paragraph or invalid under paragraph (2), if the Secretary determines that the State's showing made under paragraph (1) with respect to any calendar quarter ending on or before December 31, 1978 [96], is satisfactory under such paragraph and is valid under paragraph (2).[97]

(4)(A) The Secretary may not find the showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory if the showing is submitted to the Secretary later than the 30th day after the last day of the calendar quarter, unless the State demonstrates to the satisfaction of the Secretary good cause for not meeting such deadline.

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals, skilled nursing facilities, and intermediate care facilities under paragraph [97A] (26) and (31) of section 1902(a), if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due deligence [97B] in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.[98]

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[95] P.L. 96-499, § 964(1), deleted "October 1, 1977" and substituted "January 1, 1978", effective December 5, 1980.

[96] P.L. 96-499, § 964(2), deleted "the calendar quarter ending on December 31, 1977" and substituted "any calendar quarter ending on or before December 31, 1978", effective December 5, 1980.

[97] P.L. 95-142, § 20(a)(4), added paragraph (3). For effective date, see P.L. 95-142, § 20(c), in Vol. II, p. 1678.

[97A] As in original. Should be "paragraphs".

[97B] As in original. Should be "diligence".

[98] P.L. 95-142, § 20(a)(4), added paragraphs (4) through (6). For effective date see P.L. 95-142, § 20(c), in Vol. II, p. 1678.

(5) In the case of a State's unsatisfactory or invalid showing made with respect to a type of facility or institutional services in a calendar quarter, the per centum amount of the reduction of the State's Federal medical assistance percentage for that type of services under paragraph (1) is equal to 33⅓ per centum multiplied by a fraction, the denominator of which is equal to the total number of patients receiving that type of services in that quarter under the State plan in facilities or institutions for which a showing was required to be made under this subsection, and the numerator of which is equal to the number of such patients receiving such type of services in that quarter in those facilities or institutions for which a satisfactory and valid showing was not made for that calendar quarter.[98]

(6) The Secretary shall submit to Congress, not later than sixty days after the end of such calendar quarter, a report on—

(A) his determination as to whether or not each showing, made under paragraph (1) by a State with respect to the calendar quarter, has been found to be satisfactory under such paragraph;

(B) his review (through onsite surveys and otherwise) under paragraph (2) of the validity of showings previously submitted by a State; and

(C) any reduction in the Federal medical assistance percentage he has imposed on a State because of its submittal under paragraph (1) of an unsatisfactory or invalid showing.[98] [99]

(h)(1) If the Secretary determines for any calendar quarter beginning after June 30, 1973, with respect to any State that there does not exist a reasonable cost differential between the statewide average cost of skilled nursing facility services and the statewide average cost of intermediate care facility services in such State, the Secretary may reduce the amount which would otherwise be considered as expenditures under the State plan by any amount which in his judgment is a reasonable equivalent of the difference between the amount of the expenditures by such State for intermediate care facility services and the amount that would have been expended by such State for such services if there had been a reasonable cost differential between the cost of skilled nursing facility services and the cost of intermediate care facility services.

(2) In determining whether any such cost differential in any State is reasonable the Secretary shall take into consideration the range of such cost differentials in all States.

(3) For the purposes of this subsection, the term "cost differential" for any State for any quarter means, as determined by the Secretary on the basis of the data for the most recent calendar quarter for which satisfactory data are available, the excess of—

(A) the average amount paid in such State (regardless of the source of payment) per inpatient day for skilled nursing facility services, over

(B) the average amount paid in such State (regardless of the source of payment) per inpatient day for intermediate care facility services.

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[99] See P.L. 95-59, § 6, with respect to deferral of implementation of certain decreases in medicaid matching funds, in Vol. II, p. 1675.

(4) For purposes of this subsection, the term "cost" shall mean amounts reimbursable by the State under a State plan approved under this title.

(i) Payment under the preceding provisions of this section shall not be made—

(1) with respect to any amount paid for items or services furnished under the plan after December 31, 1972, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under the fourth and fifth sentences of section 1842(b)(3); or

(2) with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under title XVIII with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1862(d)(1) or under clause (D), (E), or (F) of section 1866(b)(2), or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1866(b)(2) or under section 1902(a)(38) [100]; or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for care or services furnished under the plan by a hospital or skilled nursing facility unless such hospital or skilled nursing facility has in effect a utilization review plan which meets the requirements imposed by section 1861(k) for purposes of title XVIII; and if such hospital or skilled nursing facility has in effect such a utilization review plan for purposes of title XVIII, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this title; the Secretary is authorized to waive the requirements of this paragraph if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1861(k).

(j) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State for any quarter shall be adjusted in accordance with section 1914.[101]

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[100] P.L. 95-142, § 3(c)(2), added ", or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1866(b)(2) or under section 1902(a)(38)", effective January 1, 1978.

[101] P.L. 96-499, § 905(c)(1), amended subsection (j) in its entirety, effective December 5, 1980. For subsection (j) as it formerly read, see Vol. II, p. 1839.

P.L. 92-603, § 225, added another subsection (j) which was stricken by P.L. 93-66, § 234(a), effective with respect to expenditures for skilled nursing services and for intermediate care facility services furnished in calendar quarters which begin after December 31, 1972. For that subsection (j) as it formerly read, see Vol. II, p. 1753.

(k) The Secretary is authorized to provide at the request of any State (and without cost to such State) such technical and actuarial assistance as may be necessary to assist such State to contract with any health maintenance organization which meets the requirements of section 1876 for the purpose of providing medical care and services to individuals who are entitled to medical assistance under this title.

[(l) Repealed.[102]]

(m)(1)(A) The term "health maintenance organization" means a legal entity which provides health services to individuals enrolled in such organization and which—

(i) provides to its enrollees who are eligible for benefits under this title the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1905[103], and, to the extent required by section 1902(a)(13)(A)(ii) to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1905(a);

(ii) provides such services and benefits in the manner prescribed in section 1301(b) of the Public Health Service Act[104] (except that, solely for purposes of this paragraph, the term "basic health services" and references thereto, when employed in such section, shall be deemed to refer to the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1905(a), and, to the extent required by section 1902(a)(13)(A)(ii) to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1905(a)); and

(iii) is organized and operated in the manner prescribed by section 1301(c) of the Public Health Service Act[104] (except that solely for purposes of this paragraph, the term "basic health services" and references thereto, when employed in such section shall be deemed to refer to the services and benefits described in section 1905(a)(1), (2), (3), (4)(C), and (5), and to the extent required by section 1902(a)(13)(A)(ii) to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1905(a)).

(B) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a health maintenance organization within the meaning of subparagraph (A),[105] shall be integrated with the administration of section 1312(a) and (b) of the Public Health Service Act[106].

(2)(A) Except as provided in subparagraphs (B) and (C), no payment shall be made under this title to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity which is responsible for the provision of

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[102] P.L. 94-182, § 111(b), added subsection (l), effective (except as otherwise provided therein) January 1, 1976. P.L. 94-552, § 1, repealed subsection (l), effective January 1, 1976. For subsection (l) as it formerly read, see Vol. II, p. 1783.

[103] As in original. Should be "section 1905(a)".

[104] See Public Health Service Act (P.L. 62-265), § 1301, in Vol. II, p. 1251.

[105] P.L. 95-559, § 14(c), deleted "shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions", effective November 1, 1978.

[106] See P.L. 62-265, § 1312(a) and (b), in Vol. II, p. 1256.

inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1905(a) or for the provision of any three or more of the services described in such paragraphs unless—

(i) the Secretary (or the State as authorized by paragraph (3)) has determined that the entity is a health maintenance organization as defined in paragraph (1); and

(ii) less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of title XVIII or for benefits under both parts A and B of such title, or (II) are eligible to receive benefits under this title.[107]

(B) Subparagraph (A) does not apply with respect to payments under this title to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 329 [108] (d)(1)(A) or 330(d)(1) of the Public Health Service Act [109], and (II) [109A] for the period beginning July 1, 1976, and ending on the expiration of the peroid [109B] for which payments are to be made under this title has been the recipient of a grant under either such section; and

(II) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1905(a) and, to the extent required by section 1902(a)(13)(A)(ii) to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of such section [109C]; or

(ii) is a nonprofit primary health care entity located in a rural area (as defined by the Appalachian Regional Commission)—

(I) which received in the fiscal year ending June 30, 1976, at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965 [110], and

(II) for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this title either has been the recipient of a grant, subgrant, or subcontract under such Act or has provided services under a contract (initially entered into during a year in which the entity was the recipient of such a grant, subgrant, or subcontract) with a State agency

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[107] P.L. 95-83, § 105(a)(1), amended subparagraph (A) in its entirety, effective with respect to payments under title XIX to States for services provided—

(A) after October 8, 1976, under contracts under title XIX entered into or renegotiated after October 8, 1976, or

(B) after the expiration of the one-year period beginning on October 8, 1976,

whichever occurs first. For subparagraph (A) as it formerly read, see Vol. II, p. 1789.

[108] P.L. 95-626, § 102(a)(3), deleted "319" and substituted "329", effective November 10, 1978.

[109] See P.L. 62-265, §§ 329(d)(1)(A) and 330(d)(1), in Vol. II, p. 1233.

[109A] As in original; this subdivision designation "(II)" should be deleted.

[109B] As in original. Should be "period".

[109C] Reference is to section 1905(a).

[110] P.L. 89-4 (79 Stat. 5), approved March 9, 1965; see 40 U.S.C. App. 214, 303.

under this title on a prepaid capitation risk basis or on any other risk basis; or

(iii) which has contracted with the single State agency for the provision of services (but not including inpatient hospital services) to persons eligible under this title on a prepaid risk basis prior to 1970.

(C) Subparagraph (A)(ii)[111] shall not apply with respect to payments under this title to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on the date of enactment of this subsection[112] or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary)[113], whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii)[111].

(3) A State may, in the case of an entity which has submitted an application to the Secretary for determination that it is a health maintenance organization within the meaning of paragraph (1) and for which no such determination has been made within 90 days of the submission of the application, make a provisional determination for the purposes of this title that such entity is such a health maintenance organization. Such provisional determination shall remain in force until such time as the Secretary makes a determination regarding the entity's qualification under paragraph (1).[114]

(n) The State agency may refuse to enter into any contract or agreement with a hospital, nursing home, or other institution, organization, or agency for purposes of participation under the State plan, or otherwise to approve an institution, organization, or agency for such purposes, if any person, who has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of such institution, organization, or agency, is a person described in section 1126(a) (whether or not such institution, organization, or agency has in effect an agreement entered into with the Secretary pursuant to section 1866[115] of this section[115]); and, notwithstanding any other provision of this section, the State agency may terminate any such contract, agreement, or approval if it determines that the institution, organization, or agency did not fully and accurately make any disclosure required of it by section 1126(a) at the time

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[111] P.L. 95-83, § 105(a)(2), deleted "(A)(iii)" and substituted "(A)(ii)", effective as shown in footnote 107 of this title.

[112] October 8, 1976, (P.L. 94-460, 90 Stat. 1945, at 1959)

[113] P.L. 96-79, § 128, deleted "the date the entity enters into a contract with the State under this title for the provision of health services on a prepaid risk basis" and substituted "the date the entity qualifies as a health maintenance organization (as determined by the Secretary)", effective October 4, 1979.

[114] P.L. 94-460, § 202(a), added subsection (m) effective with respect to payments under title XIX to States for services provided—

(1) after October 8, 1976, under contracts under title XIX entered into or renegotiated after October 8, 1976, or

(2) after the expiration of the 1-year period beginning on October 8, 1976,

whichever occurs first.

[115] P.L. 96-499, § 905(c)(2), deleted "or is subject to a suspension of payment order issued under subsection (j)", effective December 5, 1980. As in original; should delete "of this section".

such contract or agreement was entered into or such approval was given.[116]

(o) Notwithstanding the preceding provisions of this section, no payment shall be made to a State under the preceding provisions of this section for expenditures for medical assistance provided for an individual under its State plan approved under this title to the extent that a private insurer (as defined by the Secretary by regulation) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.[117]

(p)(1) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of rights of support or payment assigned under section 1912, pursuant to a cooperative arrangement under such section (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of payments for medical assistance provided to the eligible individuals on whose behalf such enforcement and collection was made, an amount equal to 15 percent of any amount collected which is attributable to such rights of support or payment.

(2) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraph (1) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.[117]

(q) For the purposes of this section, the term "State medicaid fraud control unit" means a single identifiable entity of the State government which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) The entity (A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, approved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this title to the appropriate authority or authorities in the State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecu-

[116] P.L. 95-142, § 8(c), added subsection (n), effective with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after February 1, 1978.

[117] P.L. 95-142, § 11(a), added subsections (o) and (p), effective with respect to medical assistance provided, under a State plan approved under title XIX, on and after January 1, 1978.

tion of suspected criminal violations relating to the program under this title.

(2) The entity is separate and distinct from the single State agency that administers or supervises the administration of the State plan under this title.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this title.

(4) The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this title, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan to health care facilities and that are discovered by the entity in carrying out its activities.

(6) The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.[118]

(r)(1)(A) In order to receive payments under paragraphs (2) and (7) of subsection (a) without being subject to per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B).

(B) The deadline for operation of such systems for a State is the earlier of (i) September 30, 1982, or (ii) the last day of the sixth month following the date specified for operation of such systems in the State's most recently approved advance planning document submitted before the date of the enactment of this subsection.[119]

(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2) and (7) of subsection (a) with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning on or after such deadline, and shall be further reduced by an additional 5 percentage points after each period consisting of two quarters during which the Secretary determines the State fails to meet the requirements of subparagraph (A); except that—

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[118] P.L. 95-142, § 17(c), added subsection (q), effective October 25, 1977.
[119] October 7, 1980 (P.L. 96-398, 94 Stat. 1564, 1609).

(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph; and

(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State meets the requirements of subparagraph (A).

(2)(A) In order to receive payments under paragraphs (2) and (7) of subsection (a) without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must have its mechanized claims processing and information retrieval systems, of the type required to be operational under paragraph (1), initially approved by the Secretary in accordance with paragraph (5)(A) on or before the deadline established under subparagraph (B).

(B) The deadline for approval of such systems for a State is the last day of the fourth quarter that begins after the date on which the Secretary determines that such systems became operational as required under paragraph (1).

(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2) and (7) of subsection (a) with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning after such deadline, and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters during which the State fails to meet the requirements of subparagraph (A); except that—

(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph, and

(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State's systems are approved by the Secretary as provided in subparagraph (A).

(D) Any State's systems which are approved by the Secretary for purposes of subsection (a)(3)(B) on or before the date of the enactment of this subsection shall be deemed to be initially approved for purposes of this subsection.

(3)(A) When a State's systems are initially approved, the 75 per centum Federal matching provided in subsection (a)(3)(B) shall become effective with respect to such systems, retroactive to the first quarter beginning after the date on which such systems became operational as required under paragraph (1), except as provided in subparagraph (B).

(B) In the case of any State which was subject to a per centum reduction under paragraph (2), the per centum specified in subsection (a)(3)(B) shall be reduced by 5 percentage points for the first two quarters beginning after the deadline established under paragraph (2)(B), and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters beginning after such deadline and before the date on which such systems are initially approved, except that no reduction shall be made under this paragraph for any quarter following the quarter during which the State's systems are initially approved by the Secretary.

(4)(A) The Secretary shall review all approved systems not less often than once each fiscal year, and shall reapprove or disapprove any such systems. Systems which fail to meet the current perform-

ance standards, system requirements, and any other conditions for approval developed by the Secretary under paragraph (6) shall be disapproved. Any State having systems which are so disapproved shall be subject to a per centum reduction under subparagraph (B). The Secretary shall make the determination of reapproval or disapproval and so notify the States not later than the end of the first quarter following the review period.

(B) If the Secretary disapproves a State's systems under subparagraph (A), the Secretary shall, with respect to such State for quarters beginning after the determination of disapproval and before the first quarter beginning after such systems are reapproved, reduce the per centum specified in subsection (a)(3)(B) to a per centum of not less than 50 per centum and not more than 70 per centum as the Secretary determines to be appropriate and commensurate with the nature of noncompliance by such State; except that such per centum may not be reduced by more than 10 percentage points in any 4-quarter period by reason of this subparagraph. No State shall be subject to a per centum reduction under this paragraph (i) before the fifth quarter beginning after such State's systems were initially approved, or (ii) on the basis of a review conducted before October 1, 1981.

(C) The Secretary may retroactively waive a per centum reduction imposed under subparagraph (B), if the Secretary determines that the State's systems meet all current performance standards and other requirements for reapproval and that such action would improve the administration of the State's plan under this title, except that no such waiver may extend beyond the four quarters immediately prior to the quarter in which the State's systems are reapproved.

(5)(A) In order to be initially approved by the Secretary, mechanized claims processing and information retrieval systems must be of the type described in subsection (a)(3)(B) and must meet the following requirements:

(i) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

(ii) The State must provide that information on probable fraud or abuse which is obtained from, or developed by, the systems, is made available to the State's medicaid fraud control unit (if any) certified under subsection (q) of this section.

(iii) The systems must meet all performance standards and other requirements for initial approval developed by the Secretary under paragraph (6).

(B) In order to be reapproved by the Secretary, mechanized claims processing and information retrieval systems must meet the requirements of subparagraphs (A)(i) and (A)(ii) and performance standards and other requirements for reapproval developed by the Secretary under paragraph (6).

(6) The Secretary, with respect to State systems, shall—

(A) develop performance standards, system requirements, and other conditions for approval for use in initially approving such State systems, and shall further develop written approval procedures for conducting reviews for initial approval, includ-

ing specific criteria for assessing systems in operation to insure that all such performance standards and other requirements are met;

(B) by not later than October 1, 1980, develop an initial set of performance standards, system requirements, and other conditions for reapproval for use in reapproving or disapproving State systems, and shall further develop written reapproval procedures for conducting reviews for reapproval, including specific criteria for reassessing systems operations over a period of at least six months during each fiscal year to insure that all such performance standards and other requirements are met on a continuous basis;

(C) provide that reviews for reapproval, conducted before October 1, 1981, shall be for the purpose of developing a systems performance data base and assisting States to improve their systems, and that no per centum reduction shall be made under paragraph (4) on the basis of such a review;

(D) insure that review procedures, performance standards, and other requirements developed under subparagraph (B) are sufficiently flexible to allow for differing administrative needs among the States, and that such procedures, standards, and requirements are of a nature which will permit their use by the States for self-evaluation;

(E) notify all States of proposed procedures, standards, and other requirements at least one quarter prior to the fiscal year in which such procedures, standards, and other requirements will be used for conducting reviews for reapproval;

(F) periodically update the systems performance standards, system requirements, review criteria, objectives, regulations, and guides as the Secretary shall from time to time deem appropriate;

(G) provide technical assistance to States in the development and improvement of the systems so as to continually improve the capacity of such systems to effectively detect cases of fraud or abuse;

(H) for the purpose of insuring compatibility between the State systems and the systems utilized in the administration of title XVIII—

(i) develop a uniform identification coding system (to the extent feasible) for providers, other persons receiving payments under the State plans (approved under this title) or under title XVIII, and beneficiaries of medical services under such plans or title;

(ii) provide liaison between States and carriers and intermediaries having agreements under title XVIII to facilitate timely exchange of appropriate data; and

(iii) improve the exchange of data between the States and the Secretary with respect to providers and other persons who have been terminated, suspended, or otherwise sanctioned under a State plan (approved under this title) or under title XVIII;

(I) develop and disseminate clear definitions of those types of reasonable costs relating to State systems which are reimburs-

able under the provisions of subsection (a)(3) of this section; and

(J) report on or before October 1, 1981, to the Congress on the extent to which States have developed and operated effective mechanized claims processing and information retrieval systems.

(7)(A) The Secretary shall waive the provisions of this subsection with respect to initial operation and approval of mechanized claims processing and information retrieval systems with respect to any State which—

(i) had a 1976 population (as reported by the Bureau of the Census) of less than 1,000,000 and which made total expenditures (including Federal reimbursement) for which Federal financial participation is authorized under this title of less than $100,000,000 in fiscal year 1976 (as reported by such State for such year), or

(ii) is a Commonwealth, or territory or possession, of the United States,

if such State reasonably demonstrates, and the Secretary does not formally disagree, that the application of such provisions would not significantly improve the efficiency of the administration of such State's plan under this title.

(B) If the Secretary determines that the application of the provisions described in subparagraph (A) to a State would significantly improve the efficiency of the administration of the State's plan under this title, the Secretary may withdraw the State's waiver under subparagraph (A) and, in such case, the Secretary shall impose a timetable for such State with respect to compliance with the provisions of this subsection and the imposition of per centum reductions. Such timetable shall be comparable to the timetable established under this subsection as to the amount of time allowed such State to comply and the timing of per centum reductions.

(8)(A) The per centum reductions provided for under this subsection shall not apply to a State for any quarter with respect to which the Secretary determines that such State is unable to comply with the relevant requirements of this subsection—

(i) for good cause (but such a waiver may not be for a period in excess of 2 quarters), or

(ii) due to circumstances beyond the control of such State.

(B) If the Secretary determines under subparagraph (A) that such a reduction will not apply to a State, the Secretary shall report to the Congress on the basis for each such determination and on the modification of all time limitations and deadlines as described in subparagraph (C).

(C) For purposes of determining all time limitations and deadlines imposed under this subsection, any time period during which a State was found under subparagraph (A)(ii) to be unable to comply with requirements of this subsection due to circumstances beyond its control shall not be taken into account, and the Secretary shall modify all such time limitations and deadlines with respect to such State accordingly.[120]

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[120] P.L. 96-398, § 901, added subsection (r), effective October 7, 1980.

OPERATION OF STATE PLANS

SEC. 1904. [42 U.S.C. 1396c] If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1902; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

DEFINITIONS

SEC. 1905. [42 U.S.C. 1396d] For purposes of this title—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A)) not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI [121], who are—

(i) under the age of 21,

(ii) relatives specified in section 406(b)(1) with whom a child is living if such child, except for section 406(a)(2), is (or would, if needy, be) a dependent child under part A of title IV,

(iii) 65 years of age or older,

(iv) blind, with respect to States eligible to participate in the State plan program established under title XVI,[122]

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[121] P.L. 93-233, § 13(a)(13), deleted "individuals not receiving aid or assistance under the State's plan approved under title I, X, XIV, or XVI, or part A of title IV" and substituted "individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A)) not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[122] P.L. 93-233, § 13(a)(14), added "with respect to States eligible to participate in the State plan program established under title XVI," effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

(v) 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under title XVI,[123]

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under title I, X, XIV, or XVI, or [124]

(vii) blind or disabled as defined in section 1614, with respect to States not eligible to participate in the State plan program established under title XVI,[125]

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);

(2)(A) outpatient hospital services, and (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (l)) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (l)) and which are otherwise included in the plan; [126]

(3) other laboratory and X-ray services;

(4)(A) skilled nursing facility services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older (B) effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies;

(5) physicians' services furnished by a physician (as defined in section 1861(r)(1)), whether furnished in the office, the patient's home, a hospital, or a skilled nursing facility, or elsewhere;

(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services;

(8) private duty nursing services;

(9) clinic services;

(10) dental services;

(11) physical therapy and related services;

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[123] P.L. 93-233, § 13(a)(15), deleted "or" and substituted "with respect to States eligible to participate in the State plan program established under title XVI,", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[124] P.L. 93-233, § 13(a)(16), inserted "or", effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973. See P.L. 93-66, § 230, with respect to coverage of essential persons under medicaid, in Vol. II, p. 1473.

[125] P.L. 93-233, § 13(a)(17), added clause (vii), effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[126] P.L. 95-210, § 2(a), amended paragraph (2) in its entirety. For the effective date, see P.L. 95-210, § 2(f) in Vol. II, p. 1681. For paragraph (2) as it formerly read, see Vol. II, p. 1793.

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilitative services;

(14) inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in an institution for tuberculosis or mental diseases;

(15) intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1902(a)(31)(A), to be in need of such care;

(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h); [127]

(17) services furnished by a nurse-midwife (as defined in subsection (m)) which he is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not he is under the supervision of, or associated with, a physician or other health care provider; and [128]

(18) [129] any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary;

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

For purposes of clauses [129A] (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under title I, X, XIV, or XVI), and such person is determined, under such a State plan, to be essential to the well being of such individual.

(b) The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except

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[127] P.L. 93-233, § 18(x)(7), deleted "under 21, as defined in subsection (e);" and substituted "under age 21, as defined in subsection (h); and", effective December 31, 1973.

[128] P.L. 96-499, § 965(a)(1)(C), added paragraph (17), effective with respect to payments under this title of the Social Security Act for calendar quarters beginning July 1, 1981, and thereafter, unless the Secretary determines State legislation is required; in such case see P.L. 96-499, § 965(c)(2), in Vol. II, p. 1741.

[129] P.L. 96-499, § 965(a)(1)(B), redesignated the former paragraph (17) as paragraph (18), effective as indicated in footnote 128 of this title.

[129A] As in original. Should be "clause".

that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, and Guam shall be 50 per centum. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1101(a)(8) [130]. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act [131]).[132]

(c) For purposes of this title the term "intermediate care facility" means an institution which (1) is licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility [133] is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, (2) meets such standards prescribed by the Secretary as he finds appropriate for the proper provision of such care, (3) meets such standards of safety and sanitation as are established under regulation of the Secretary in addition to those applicable to nursing homes [133A] under State law; and (4) meets the requirements of section 1861(j)(14) with respect to protection of patients' personal funds.[134] The term "intermediate care facility" also includes any skilled nursing facility [133] or hospital which meets the requirements of the preceding sentence. The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State. The term "intermediate care facility" also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of clauses (2), (3), and (4) [135] of this subsection and providing the care and services required under clause [136] (1). With

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[130] P.L. 93-233, § 18(y)(2), deleted ", except that the Secretary shall promulgate such percentage as soon as possible after the enactment of this title, which promulgation shall be conclusive for each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1967", effective December 31, 1973. Executed as if P.L. 93-233, § 18(y)(2), reference was to deletion of material following § 1101(a)(8) [instead of § 1110(a)(8)].

[131] See P.L. 94-437, § 4, in Vol. II, p. 1495.

[132] P.L. 94-437, § 402(e), added "Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).", effective September 30, 1976.

See P.L. 94-241, § 1, for § 502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam, in Appendix E, in Vol. II, p. 1016.

[133] P.L. 93-233, § 18(x)(8), deleted "skilled nursing home" and substituted "skilled nursing facility", effective December 31, 1973.

[133A] Questionable term in law. Should probably be "nursing facilities".

[134] P.L. 95-292, § 8(a), deleted the period and substituted "; and (4) meets the requirements of section 1861(j)(14) with respect to protection of patients' personal funds.", effective July 1, 1978.

[135] P.L. 95-292, § 8(b), deleted "and (3)" and substituted ", (3), and (4)", effective July 1, 1978.

[136] P.L. 96-473, § 6(k), deleted "clauses" and substituted "clause", effective October 19, 1980.

respect to services furnished to individuals under age 65, the term "intermediate care facility" shall not include, except as provided in subsection (d), any public institution or distinct part thereof for mental diseases or mental defects.[137]

(d) The term "intermediate care facility services" may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and which meet such standards as may be prescribed by the Secretary;

(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this title is receiving active treatment under such a program; and

(3) the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under this title, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its plan approved under this title.

(e) In the case of any State the State plan of which (as approved under this title)—

(1) does not provide for the payment of services (other than services covered under section 1902(a)(12)) provided by an optometrist; but

(2) at a prior period did provide for the payment of services referred to in paragraph (1);

the term "physicians' services" (as used in subsection (a)(5)) shall include services of the type which an optometrist is legally authorized to perform where the State plan specifically provides that the term "physicians' services", as employed in such plan, includes services of the type which an optometrist is legally authorized to perform, and shall be reimbursed whether furnished by a physician or an optometrist.

(f) For purposes of this title, the term "skilled nursing facility services" means services which are or were required to be given an individual who needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis.

(g) If the State plan includes provision of chiropractors' services, such services include only—

(1) services provided by a chiropractor (A) who is licensed as such by the State and (B) who meets uniform minimum standards promulgated by the Secretary under section 1861(r)(5); and

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[137] See P.L. 95-292, § 8(c), with respect to costs chargeable to patients' funds, in Vol. II, p. 1694.

(2) services which consist of treatment by means of manual manipulation of the spine which the chiropractor is legally authorized to perform by the State.

(h)(1) For purposes of paragraph (16) of subsection (a), the term "inpatient psychiatric hospital services for individuals under age 21" includes only—

(A) inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;

(B) inpatient services which, in the case of any individual (i) involve active treatment [138] which meets such standards as may be prescribed [138] in regulations by the Secretary, and (ii) [138] a team, consisting of physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof, has determined are necessary on an inpatient basis and can reasonably be expected to improve the condition, by reason of which such services are necessary, to the extent that eventually such services will no longer be necessary; and

(C) inpatient services which, in the case of any individual, are provided prior to (A) the date such individual attains age 21, or (B) in the case of an individual who was receiving such services in the period immediately preceding the date on which he attained age 21, (i) the date such individual no longer requires such services, or (ii) if earlier, the date such individual attains age 22;

(2) Such term does not include services provided during any calendar quarter under the State plan of any State if the total amount of the funds expended, during such quarter, by the State (and the political subdivisions thereof) from non-Federal funds for inpatient services included under paragraph (1) [139], and for active psychiatric care and treatment provided on an outpatient basis for eligible mentally ill children, is less than the average quarterly amount of the funds expended, during the 4-quarter period ending December 31, 1971, by the State (and the political subdivisions thereof) from non-Federal funds for such services.

(i) [140] For purposes of this title, the term "skilled nursing facility" also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as being a qualified skilled nursing facility by meeting the requirements of section 1861(j).

(j) The term "State supplementary payment" means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under title XVI or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits (as determined by the Secretary), but only to the extent that such payments are made with respect to an individual with respect

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[138] P.L. 93-233, § 18(w), deleted ", involves active treatment (i)" and substituted "(i) involve active treatment", deleted "pursuant to title XVIII", and deleted "(ii) which" and substituted "(ii)", effective December 31, 1973.

[139] P.L. 93-233, § 18(x)(10), deleted "(e)(1)" and substituted "(1)", effective December 31, 1973.

[140] P.L. 93-233, § 18(x)(9), redesignated this subsection (h) (added by P.L. 92-603, § 299L(b)) as subsection (i), effective December 31, 1973.

to whom supplemental security income benefits are payable under title XVI, or would but for his income be payable under that title.[141]

(k) Increased supplemental security income benefits payable pursuant to section 211 of Public Law 93–66 [142] shall not be considered supplemental security income benefits payable under title XVI.[141]

(l) The terms "rural health clinic services" and "rural health clinic" have the meanings given such terms in section 1861(aa), except that (1) clause (ii) of section 1861(aa)(2) shall not apply to such terms, and (2) the physician arrangement required under section 1861(aa)(2)(B) shall only apply with respect to rural health clinic services and, with respect to other ambulatory care services, the physician arrangement required shall be only such as may be required under the State plan for those services.[143]

(m) The term "nurse-midwife" means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies (throughout the maternity cycle) which he is legally authorized to perform in the State in which he performs such services.[144]

[SEC. 1906. Repealed.[145]]

OBSERVANCE OF RELIGIOUS BELIEFS

SEC. 1907. [42 U.S.C. 1396f] Nothing in this title shall be construed to require any State which has a plan approved under this title to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

STATE PROGRAMS FOR LICENSING OF ADMINISTRATORS OF NURSING HOMES

SEC. 1908. [42 U.S.C. 1396g] (a) For purposes of section 1902(a)(29), a "State program for the licensing of administrators of nursing homes" is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions

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[141] P.L. 93–233, § 13(a)(18), added this subsection, effective with respect to payments under § 1903 for calendar quarters commencing after December 31, 1973.

[142] See P.L. 93–66, § 211, in Vol. II, p. 1469.

[143] P.L. 95–210, § 2(b), added subsection (l). For the effective date, see P.L. 95–210, § 2(f), in Vol. II, p. 1681.

See P.L. 95–210, § 1(c), with respect to rural health clinics, in Vol. II, p. 1680.

[144] P.L. 96–499, § 965(a)(2), added subsection (m), effective with respect to payments under this title of the Social Security Act for calendar quarters beginning July 1, 1981, and thereafter, unless the Secretary determines State legislation is required; in the latter case see P.L. 96–499, § 965(c)(2), in Vol. II, p. 1741.

[145] P.L. 92–603, § 287(a), effective January 1, 1973.

and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) No State shall be considered to have failed to comply with the provisions of section 1902(a)(29) because the agency or board of such State (established pursuant to subsection (b)) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1902(a)(29) are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c).[146]

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[146] P.L. 93-233, § 18(y)(3), effective December 31, 1973, deleted the following sentence:

"No State shall be considered to have failed to comply with the provisions of section 1902(a)(29) because the agency or board of such State (established pursuant to subsection (b)) shall have granted any waiver, with respect to any individual who, during all of the calendar years immediately preceding the calendar year in which the requirements prescribed in section 1902(a)(29) are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such board pursuant to subsection (c)(1) other than such standards as relate to good character or suitability if—

"(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier, and

Continued

(e) [147] As used in this section, the term—

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and

(2) "nursing home administrator" means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

PENALTIES [148]

SEC. 1909. [42 U.S.C. 1396h] (a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a State plan approved under this title,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under this title, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction

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"(2) there is provided in the State (during all of the period for which waiver is in effect), a program of training and instruction designed to enable all individuals, with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards."

[147] P.L. 93-233, § 18(y)(3), deleted subsections (e) and (f) and redesignated subsection (g) as subsection (e), effective December 31, 1973. For subsections (e) and (f) as they formerly read, see Vol. II, p. 1760.

[148] P.L. 95-142, § 4(b), amended § 1909 in its entirety, effective with respect to acts occurring and statements or representations made on or after October 25, 1977. For § 1909 as it formerly read, see Vol. II, p. 1792.

thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a State plan approved under this title is convicted of an offense under the preceding provisions of this subsection, the State may at its option (notwithstanding any other provision of this title or of such plan) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b)(1) Whoever knowingly and willfully [149] solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully [149] offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this title; and

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or

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[149] P.L. 96-499, § 917, added "knowingly and willfully", effective December 5, 1980.

representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, intermediate care facility, or home health agency (as those terms are employed in this title) shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under this title, money or other consideration at a rate in excess of the rates established by the State, or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under this title, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

CERTIFICATION AND APPROVAL OF SKILLED NURSING FACILITIES AND OF RURAL HEALTH CLINICS [150]

SEC. 1910. [42 U.S.C. 1396i] (a)(1) [151] Whenever the Secretary certifies an institution in a State to be qualified as a skilled nursing facility under title XVIII, such institution shall be deemed to meet the standards for certification as a skilled nursing facility for purposes of section 1902(a)(28).

(2) [151] The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any institution which has applied for certification by him as a qualified skilled nursing facility.

(b)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health clinic under title XVIII, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.[152]

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[150] P.L. 95-210, § 2(d)(1), amended the heading in its entirety. For the effective date, see P.L. 95-210, § 2(f), in Vol. II, p. 1681.

See P.L. 95-210, § 1(e), with respect to rural health clinics, in Vol. II, p. 1680.

[151] P.L. 95-210, § 2(d), redesignated subsection (a) as paragraph (a)(1) and subsection (b) as paragraph (a)(2). For the effective date, see P.L. 95-210, § 2(f), in Vol. II, p. 1681.

[152] P.L. 95-210, § 2(d)(4), added subsection (b). For the effective date, see P.L. 95-210, § 2(f), in Vol. II, p. 1681.

(c)(1) The Secretary may cancel approval of any skilled nursing or intermediate care facility at any time if he finds on the basis of a determination made by him as provided in section 1902(a)(33)(B) that a facility fails to meet the requirements contained in section 1902(a)(28) or section 1905(c), or if he finds grounds for termination of his agreement with the facility pursuant to section 1866(b). In that event the Secretary shall notify the State agency and the skilled nursing facility or intermediate care facility that approval of eligibility of the facility to participate in the programs established by this title and title XVIII shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

(2) Any skilled nursing facility or intermediate care facility which is dissatisfied with a determination by the Secretary that it no longer qualifies as a skilled nursing facility or intermediate care facility for purposes of this title, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.[153]

INDIAN HEALTH SERVICE FACILITIES[154]

SEC. 1911. [42 U.S.C. 1396j] (a) A facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act[155]), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this title.

(b) Notwithstanding subsection (a), a facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility) which does not meet all of the conditions and requirements of this title which are applicable generally to such facility, but which submits to the Secretary within six months after the date of the enactment of this section[156] an acceptable plan for achieving compliance with such conditions and requirements, shall

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[153] P.L. 96-499, § 916(b)(2), added subsection (c), effective December 5, 1980.

[154] P.L. 94-437, § 402(a), added § 1911, effective September 30, 1976.

See P.L. 94-437, § 402 (b), (c), and (d) with respect to services provided to medicaid eligible Indians and § 403 with respect to reports, in Vol. II, p. 1496.

[155] See P.L. 94-437, § 4, in Vol. II, p. 1495.

[156] Enacted September 30, 1976 (P.L. 94-437, 90 Stat. 1400).

be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this title), without regard to the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.

ASSIGNMENT OF RIGHTS OF PAYMENT [157]

SEC. 1912. [42 U.S.C. 1396k] (a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this title, a State plan for medical assistance may—

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this title and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party; and

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 454(3)) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

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[157] P.L. 95-142, § 11(b), added § 1912, effective October 25, 1977.

HOSPITAL PROVIDERS OF SKILLED NURSING AND INTERMEDIATE CARE SERVICES [158]

SEC. 1913. [42 U.S.C. 1396l] (a) Notwithstanding any other provision of this title, payment may be made, in accordance with this section, under a State plan approved under this title for skilled nursing facility services and intermediate care facility services furnished by a hospital which has in effect an agreement under section 1883.

(b)(1) Payment to any such hospital, for any skilled nursing or intermediate care facility services furnished pursuant to subsection (a), shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to skilled nursing and intermediate care facilities, respectively, located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(2) With respect to any period for which a hospital has an agreement under section 1883, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

WITHHOLDING OF FEDERAL SHARE OF PAYMENTS FOR CERTAIN MEDICARE PROVIDERS [159]

SEC. 1914. [42 U.S.C. 1396m] (a) The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1866; and (B)(i) from which the Secretary has been unable to recover overpayments made under title XVIII, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under title XVIII; and

(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1842(b)(3)(B)(ii), and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under title XVIII, or submitted claims for payment under title XVIII which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine

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[158] P.L. 96-499, § 904(b), added § 1913, effective on the date on which final regulations, promulgated by the Secretary to implement this amendment, are first issued; and those regulations shall be issued not later than June 1, 1981.

[159] P.L. 96-499, § 905(d), added § 1914, effective December 5, 1980.

the amount (if any) of the overpayments made to such person under title XVIII.

(b) The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this title for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a), or the total overpayments to such institution or person under title XVIII, and may require the State to reduce its payment to such institution or person by such amount.

(c) The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under title XVIII, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under title XVIII and to which the institution or person would otherwise be entitled under this title.

(e) The Secretary shall restore to the trust funds established under sections 1817 and 1841, as appropriate, amounts recovered under this section as setoffs against overpayments under title XVIII.

(f) Notwithstanding any other provision of this title, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this title which is withheld by the State agency pursuant to an order by the Secretary under subsection (b).

TITLE XX—GRANTS TO STATES FOR SERVICES[1]

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APPROPRIATION AUTHORIZED[3]

SEC. 2001. [42 U.S.C. 1397] For the purpose of encouraging each State, as far[3A] practicable under the conditions in that State, to furnish services directed at the goal of—

(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families,

(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

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[1] Title XX of the Social Security Act is administered by the Administration for Public Services, Office of Human Development Services, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). Title XX appears in the United States Code as §§ 1397–1397f, subchapter XX, chapter 7, title 42.

Regulations of the Secretary of Health and Human Services relating to title XX are contained in chapter XIII, title 45, Code of Federal Regulations.

The Social Services Amendments of 1974 (P.L. 93–647), § 2, added title XX, effective with respect to payments for quarters commencing after September 30, 1975.

See Civil Rights Act of 1964 (P.L. 88–352) for prohibition against discrimination in Federally assisted programs, in Vol. II, p. 1555.

See Older Americans Act of 1965 (P.L. 89–73), § 203 with respect to Federal agency consultation, § 214 with respect to surplus property eligibility, and § 306(c) with respect to agreements with other agencies, in Vol. II, p. 1570.

See Intergovernmental Cooperation Act of 1968 (P.L. 90–577), §§ 2–403 and §§ 601–604, with respect to intergovernmental cooperation, in Vol. II, p. 1589.

See Joint Funding Simplification Act of 1974 (P.L. 93–510), §§ 2–13, with respect to simplification of joint funding, in Vol. II, p. 1622.

See Developmentally Disabled Assistance and Bill of Rights Act (P.L. 94–103), § 204, with respect to a study and report to Congress on standards and quality assurance mechanisms applicable to residential facilities and community agencies, in Vol. II, p. 1652.

See Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95–224), §§ 2–10, with respect to Federal grant and cooperative agreements, in Vol. II, p. 1682.

See Indian Child Welfare Act of 1978 (P.L. 95–608), §§ 201–204, with respect to Indian child and family programs, in Vol. II, p. 1705.

See Health Services and Centers Amendments of 1978 (P.L. 95–626), § 606(a)(16), with respect to adolescent pregnancies and grant requirements in regard thereto, in Vol. II, p. 1710.

[2] This table of contents does not appear in the law.

[3] See P.L. 96–499, § 1001(c), with respect to assistance to State in systematic assessment of current practices in day care programs, in Vol. II, p. 1743.

[3A] As in original. Should be "as far as".

(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States under section 2002 (and to territorial jurisdictions as described in subsection (a)(2)(C) thereof)[4].

PAYMENTS TO STATES[5]

SEC. 2002. [42 U.S.C. 1397a] (a)(1) From the sums appropriated therefor, the Secretary shall, subject to the provisions of this section and section 2003, pay to each State, for each quarter, an amount equal to 100 per centum of the expenditures during that quarter for child day care services (including expenditures for grants to qualified providers under section 2007) to the extent permitted by paragraph (17)[6,7] 90 per centum of the total expenditures during that quarter for the provision of family planning services and 75 per centum of the total expenditures during that quarter for the provision of other services directed at the goal of—

(A) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

(B) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

(C) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families,

(D) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

(E) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

including expenditures for administration (including planning and evaluation) and personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions). Services that are directed at these goals include, but are not limited to, child care services, protective services for

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[4] P.L. 96-272, § 207(b), added "(and to territorial jurisdictions as described in subsection (a)(2)(C) thereof)", effective June 17, 1980.

[5] See P.L. 96-499, § 1001(b), with respect to the applicability of P.L. 93-647 (Social Services Amendments of 1974), § 3(f), to child day care services provided after June 30, 1980, and prior to July 1, 1981, in Vol. II, p. 1743.

[6] P.L. 96-272, § 202(b), deleted "(which are not in excess of 2 per centum of the limitation applicable to that State under paragraph (2)(A) for the fiscal year in which such quarter occurs) for grants to qualified providers under section 2007" and substituted "for child day care services (including expenditures for grants to qualified providers under section 2007) to the extent permitted by paragraph (17)", effective June 17, 1980.

[7] P.L. 96-178, § 4(a), added "100 per centum of the expenditures during that quarter (which are not in excess of 2 per centum of the limitation applicable to that State under paragraph (2)(A) for the fiscal year in which such quarter occurs) for grants to qualified providers under section 2007,", effective January 2, 1980, with respect to grants made to qualified providers of child day care services during October 1, 1979, through March 31, 1980.

P.L. 96-272, § 208(a), amended that effective date effective June 17, 1980, by deleting "during the period beginning October 1, 1979, and ending March 31, 1980" and substituting "on or after October 1, 1979".

children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts.

(2)(A)(i)[8] Except as provided in clause (iii), no payment[9] may be made under this section to any State for any fiscal year in excess of an amount which bears the same ratio to the amount specified in clause (ii)[10] as the population of that State bears to the population of the fifty States and the District of Columbia. The Secretary shall promulgate the limitation applicable to each State for each fiscal year under this paragraph prior to the first day of the third month of the preceding fiscal year, as determined on the basis of the most recent satisfactory data available from the Department of Commerce.

(ii) The amount specified for purposes of clause (i) for fiscal year 1980 and each succeeding fiscal year shall be an amount (not exceeding $3,300,000,000) equal to the indexed ceiling amount for that fiscal year as determined under subparagraph (B).[11]

(iii) Payment with respect to expenditures for personnel training or retraining directly related to the provision of services under this title shall be made to a State in excess of the limitation for such State promulgated under clause (i) for any fiscal year and without regard to such limitation; except that—

(I) notwithstanding any other provision of law, payment to a State with respect to such expenditures for fiscal years 1980 and 1981 may not exceed an amount equal to 4 per centum of such State's limitation (for the fiscal year involved) under clause (i), or, if greater, an amount equal to the amount of the payment made under this title to such State with respect to such expenditures for fiscal year 1979, or equal to (a) the amount which would be payable without regard to this subclause with respect to expenditures pursuant to an appropriation made prior to October 1, 1979, by such State for fiscal year 1980, or, if less, (b) the amount determined under division (a) of this subclause reduced to the extent necessary and on a proportional basis so as to assure that the aggregate of the additional amounts payable to all States as a result of such division (a) does not exceed $6,000,000; and

(II) payment to a State with respect to such expenditures for fiscal year 1982 or any succeeding fiscal year may be made only if the State has submitted to the Secretary in accordance with paragraph (18) (prior to the beginning of the fiscal year

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[8] P.L. 95-600, § 801(a)(2), added "(i)", effective November 6, 1978.

[9] P.L. 96-272, § 203(a), deleted "No payment with respect to any expenditures other than expenditures for personnel training or retraining directly related to the provision of services" and substituted "Except as provided in clause (iii), no payment", effective June 17, 1980.

[10] P.L. 95-600, § 801(a)(1), deleted "$2,500,000,000" and substituted "the amount specified in clause (ii)", effective November 6, 1978.

[11] P.L. 96-272, § 201(a), amended clause (ii) in its entirety, effective June 17, 1980. For clause (ii) as it formerly read, see Vol. II, p. 1832.

involved) a training plan specifying how its funds expended for such training or retraining in that fiscal year will be used, and only with respect to expenditures included in such plan which are approved by the Secretary in accordance with criteria prescribed by him.[12]

(B)(i)(I) Except as otherwise provided in clauses (ii), (iii), and (iv), the indexed ceiling amount for any fiscal year shall be an amount equal to the indexed ceiling amount for the preceding fiscal year increased or decreased (as the case may be) by an amount determined under division (II).

(II) For purposes of division (I) the amount of the increase or decrease (as the case may be) shall be an amount equal to $2,500,000,000, multiplied by a percentage equal to the positive or negative percentage change in the Consumer Price Index prepared by the Department of Labor, and used in determining cost-of-living adjustments under section 215(i) of this Act, for the second quarter of the preceding fiscal year as compared to such index for the second quarter of the second preceding fiscal year (rounded to the nearest one-tenth of 1 per centum). For purposes of this clause the Consumer Price Index for any quarter shall be the arithmetical mean of such index for the three months in such quarter.

(ii) If the percentage increase in the Consumer Price Index as determined under clause (i)(II) for any fiscal year exceeds the inflation rate for that fiscal year as shown for that year (or, if no rate is shown for that year, for the most recent preceding year for which a rate is shown) in the table which appears on page 25 of Senate Budget Committee Report Numbered 96-311[13], then for such fiscal year such inflation rate shall be used in making the determination under clause (i)(II) instead of the percentage increase in the Consumer Price Index.

(iii) The indexed ceiling amount determined under clause (i) shall, if not a multiple of $100,000,000, be rounded to the next lesser amount that is a multiple of $100,000,000.

(iv) The indexed ceiling amount for fiscal year 1979 shall be $2,500,000,000.[14]

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[12] P.L. 96-272, § 203(b), added clause (iii), effective June 17, 1980.

[13] The table appears as follows:

BUDGET AND ECONOMIC FORECAST AND PROJECTIONS

	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
Budget authority (billion $)	556.1	632.2	649.2	722.5	762.2	833.1
Outlays (billion $)	496.2	542.7	588.6	632.8	676.9	719.9
Revenues (billion $)	466.3	514.7	603.6	658.4	744.4	837.2
Deficit (−) or surplus (+) (billion $)	−29.9	−28.0	+15.0	+25.6	+67.5	+117.3
Tax change from current law (gross, billion $)[1]	−0.1	+2.0	+9.7	−38.7	−58.3	−80.3
Inflation rate, %, consumer prices, fiscal year average	10.1	9.8	8.6	7.7	7.5	7.4
Unemployment rate, %, fiscal year average	5.9	7.2	7.1	6.5	5.8	5.4
Real GNP growth, %	3.2	0.0	3.5	5.0	4.6	3.9
Nominal GNP (billion $)	2,291	2,500	2,806	3,177	3,581	4,009

[1] Includes general tax reduction of $55 billion, $75 billion and $100 billion in FY 1982, FY 1983 and FY 1984 respectively, revenue raising cash management initiatives and other minor revenue changes.

[14] P.L. 96-272, § 201(b), added this subparagraph (B), effective June 17, 1980.

Continued

(C) From the amounts made available under section 2001 for any fiscal year beginning with fiscal year 1980 (in addition to any sums appropriated for purposes of payments under the preceding provisions of this subsection), the Secretary shall allocate—

(i) to the jurisdictions of Puerto Rico, Guam, and the Virgin Islands, for purposes of payments under sections 3(a)(4) and (5), 403(a)(3), 1003(a)(3) and (4), 1403(a)(3) and (4), and 1603(a)(4) and (5), with respect to services, the sums of $15,000,000, $500,000 and $500,000, respectively, and

(ii) to the jurisdiction of the Northern Mariana Islands, for purposes of payments under section 403(a)(3), with respect to services and for services programs for other individuals as defined by the Secretary, the sum of $100,000,

in addition to any amounts otherwise available to such jurisdictions under this Act.[15] [16]

(3) No payment may be made under this section to any State with respect to any expenditure for the provision of any service to any individual unless—

(A) the State's services program planning meets the requirements of section 2004, and

(B) the final comprehensive[17] services plan in effect when the service is provided to the individual includes the provision of that service to a category of individuals which includes that individual in the descriptions required by section 2004(2)(B) and (C) of the services to be provided under the plan and the categories of individuals to whom the services are to be provided.

The Secretary may not deny payment under this section to any State with respect to any expenditure on the ground that it is not an expenditure for the provision of a service or is not an expenditure for the provision of a service directed at a goal described in paragraph (1) of this subsection.

(4) So much of the aggregate expenditures with respect to which payment is made under this section to any State for any fiscal year as equals 50 per centum of the payment made under this section to the State for that fiscal year must be expended for the provision of services to individuals—

(A) who are receiving aid under the plan of the State approved under part A of title IV or who are eligible to receive such aid, or

(B) whose needs are taken into account in determining the needs of an individual who is receiving aid under the plan of the State approved under part A of title IV, or who are eligible to have their needs taken into account in determining the

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P.L. 96-272, § 201(b), struck out the former subparagraph (B), effective June 17, 1980. P.L. 96-272, § 201(c), with respect to fiscal year 1980 only, redesignated that subparagraph (B) as subparagraph (D). For that subparagraph (D), see Vol. II, p. 1832.

[15] P.L. 96-272, § 207(a), added this subparagraph (C), effective June 17, 1980.

P.L. 96-272, § 201(b), struck out the former subparagraph (C), effective June 17, 1980. P.L. 96-272, § 201(c), with respect to fiscal year 1980 only, redesignated that subparagraph (C) as subparagraph (E). For that subparagraph (E), see Vol. II, p. 1832.

[16] P.L. 96-272, § 201(b), struck out subparagraph (D), effective June 17, 1980. P.L. 96-272, § 201(c), with respect to fiscal year 1980 only, redesignated that subparagraph (D) as subparagraph (F) and amended it in its entirety. For subparagraph (F) as it read with respect to fiscal year 1980, see Vol. II, p. 1832.

[17] P.L. 96-272, § 206(e), deleted "annual", effective with respect to services program periods beginning after June 17, 1980.

needs of an individual who is receiving or is eligible to receive such aid, or

(C) with respect to whom supplemental security income benefits under title XVI or State supplementary payments, as defined in section 2008(1)[18], are being paid, or who are eligible to have such benefits or payments paid with respect to them, or

(D) whose income and resources are taken into account in determining the amount of supplemental security income benefits or State supplementary payments, as defined in section 2008(1)[18], being paid with respect to an individual, or whose income and resources would be taken into account in determining the amount of such benefits or payments to be paid with respect to an individual who is eligible to have such benefits or payments paid with respect to him, or

(E) who are eligible for medical assistance under the plan of the State approved under title XIX.

In any case in which services are provided to individuals to whom the provisions of paragraph (14) are applied, the proportion of the expenditures for such services which are attributable to individuals described in the preceding sentence may be determined on the basis of generally accepted statistical sampling procedures.[19]

(5) No payment may be made under this section to any State with respect to any expenditure for the provision of any service to any individual—

(A) who is receiving, or whose needs are taken into account in determining the needs of an individual who is receiving, aid under the plan of the State approved under part A of title IV, or with respect to whom supplemental security income benefits under title XVI or State supplementary payments, as defined in section 2008(1)[18], are being paid, or

(B) who is a member of a family the monthly gross income of which is less than the lower of—

(i) 80 per centum of the median income of a family of four in the State, or

(ii) the median income of a family of four in the fifty States and the District of Columbia,

adjusted, in accordance with regulations prescribed by the Secretary, to take into account the size of the family.

if any fee or other charge (other than a voluntary contribution) imposed on the individual for the provision of that service is not consistent with such requirements (including requirements prohib-

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[18] P.L. 96-178, § 4(c), deleted "2007(1)" and substituted "2008(1)", effective January 2, 1980, with respect to grants made to qualified providers of child day care services during the period beginning October 1, 1979, and ending March 31, 1980.

P.L. 96-272, § 208(a), effective June 17, 1980, amended that effective date by deleting "during the period beginning October 1, 1979, and ending March 31, 1980" and substituting "on or after October 1, 1979".

[19] P.L. 94-401, § 1(b), added the preceding sentence to § 2000(a)(4), effective October 1, 1975. The amendment has been executed as if it applied to § 2002(a)(4) instead of to § 2000(a)(4).

iting the imposition of any such fee or charge) as the Secretary shall prescribe.

(6) No payment may be made under this section to any State with respect to any expenditure for the provision of any service, other than an information or referral service, family planning services,[21] or a service directed at the goal of preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, to any individual who is not an individual described in paragraph (5), and—

(A) who is a member of a family the monthly gross income of which exceeds 115 per centum of the median income of a family of four in the State, adjusted, in accordance with regulations prescribed by the Secretary, to take into account the size of the family, or

(B) who is a member of a family the monthly gross income of which—

(i) exceeds the lower of—

(I) 80 per centum of the median income of a family of four in the State, or

(II) the median income of a family of four in the fifty States and the District of Columbia,

adjusted, in accordance with regulations prescribed by the Secretary, to take into account the size of the family, and

(ii) does not exceed 115 per centum of the median income of a family of four in the State, adjusted, in accordance with regulations prescribed by the Secretary, to take into account the size of the family,

unless a fee or other charge reasonably related to income is imposed on the individual for the provision of the service. The Secretary shall promulgate the median income of a family of four in each State and the fifty States and the District of Columbia applicable to payments with respect to expenditures in each fiscal year prior to the first day of the third month of the preceding fiscal year.

(7) No payment may be made under this section to any State with respect to any expenditure—

(A) for the provision of medical or any other remedial care (except as provided in paragraph (11)(D))[22], other than family planning services, unless it is an integral but subordinate part of a service described in paragraph (1) of this subsection and Federal financial participation with respect to the expenditure

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[21] P.L. 94-401, § 1(c), inserted ", family planning services,", effective October 1, 1975.

[22] P.L. 94-120, § 4(b)(3), added "(except as provided in paragraph (11)(D))". It is effective from and after October 1, 1975.

P.L. 94-120, § 4(c), made the above-described amendment effective only for the period beginning October 1, 1975, and ending January 31, 1976.

P.L. 94-401, § 6, effective February 1, 1976, extended the closing effective date from "January 31, 1976" to "September 30, 1977".

P.L. 95-171, § 1(c), effective October 1, 1977, extended the closing effective date from "September 30, 1977" to "September 30, 1978".

P.L. 96-178, § 5(a), amended that effective date by deleting "only for the period beginning October 1, 1975, and ending September 30, 1978" and substituting "from and after October 1, 1975.", effective January 2, 1980, with respect to services provided during the period beginning October 1, 1978, and ending March 31, 1980.

P.L. 96-272, § 209, effective June 17, 1980, amended that effective date by deleting "during the period beginning October 1, 1978, and ending March 31, 1980" and substituting "on or after October 1, 1978".

is not available under the plan of the State approved under title XIX; or

(B) for the purchase, construction, or major modification of any land, building or other facility, or fixed equipment; or

(C) which is in the form of goods or services provided in kind by a private entity; or

(D) which is made from donated private funds, unless such funds—

(i) are transferred to the State and are under its administrative control, and

(ii) are donated to the State without restrictions as to use, other than restrictions as to the services with respect to which the funds are to be used imposed by a donor who is not a sponsor or operator of a program to provide those services, or the geographic area in which the services with respect to which the contribution is used are to be provided, except that during fiscal years 1980 and 1981 the provisions of this clause shall not apply with respect to funds that are donated for the purpose of training or retraining as provided in subsection (a)(1), if such training or retraining is carried out by a public or nonprofit entity,[23] and

(iii) do not revert to the donor's facility or use if the donor is other than a nonprofit organization; or

(E) for the provision of room or board (except as provided by paragraph (11)(C) and paragraph (11)(D)[24]) other than room or board provided for a period of not more than six consecutive months as an integral but subordinate part of a service described in paragraph (1) of this subsection.

With regard to ending the dependency of individuals who are alcoholics or drug addicts, the entire rehabilitative process for such individuals, including but not limited to initial detoxification, short term residential treatment, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services, shall be the basis for determining whether standards imposed by or under subparagraph (A) or (E) of this paragraph have been met.[25]

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[23] P.L. 96-272, § 204(a), inserted "except that during fiscal years 1980 and 1981 the provisions of this clause shall not apply with respect to funds that are donated for the purpose of training or retraining as provided in subsection (a)(1), if such training or retraining is carried out by a public or nonprofit entity,", effective June 17, 1980.

[24] P.L. 94-120, § 4(b)(4), added "and paragraph (11)(D)". It is effective from and after October 1, 1975.

P.L. 94-120, § 4(c), made the above-described amendment effective only for the period beginning October 1, 1975, and ending January 31, 1976.

P.L. 94-401, § 6, effective February 1, 1976, extended the closing effective date from "January 31, 1976" to "September 30, 1977".

P.L. 95-171, § 1(c), effective October 1, 1977, extended the closing effective date from "September 30, 1977" to "September 30, 1978".

P.L. 96-178, § 5(a), amended that effective date by deleting "only for the period beginning October 1, 1975, and ending September 30, 1978" and substituting "from and after October 1, 1975.", effective January 2, 1980, with respect to services provided during the period beginning October 1, 1978, and ending March 31, 1980.

P.L. 96-272, § 209, effective June 17, 1980, amended that effective date by deleting "during the period beginning October 1, 1978, and ending March 31, 1980" and substituting "on or after October 1, 1978".

[25] P.L. 94-120, § 4(b)(1), added the preceding sentence, effective as shown in footnote 24 of this title.

(8) No payment may be made under this section with respect to any expenditure if payment is made with respect to that expenditure under section 403 or 423[26] of this Act.

(9)(A) No payment may be made under this section with respect to any expenditure in connection with the provision of any child day care service, unless--

(i) in the case of care provided in the child's home, the care meets standards established by the State which are reasonably in accord with recommended standards of national standard-setting organizations concerned with the home care of children, or

(ii) in the case of care provided outside the child's home, the care meets the Federal interagency day care requirements as approved by the Department of Health, Education, and Welfare and the Office of Economic Opportunity on September 23, 1968; except that (I) subdivision III[26A] of such requirements with respect to educational services shall be recommended to the States and not required, and staffing standards for school-age children in day care centers may be revised by the Secretary, (II) the staffing standards imposed with respect to such care in the case of children under age 3 shall conform to regulations prescribed by the Secretary,[27] (III) the staffing standards imposed with respect to such care in the case of children aged 10 to 14 shall require at least one adult for each 20 children, and in the case of school-aged children under age 10 shall require at least one adult for each 15 children, (IV) the State agency may waive the staffing standards otherwise applicable in the case of a day care center or group day care home in which not more than 20 per centum of the children in the facility (or, in the case of a day care center, not more than 5 children in the center) are children whose care is being paid for (wholly or in part) from funds made available to the State under this title, if such agency finds that it is not feasible to furnish day care for the children, whose care is so paid for, in a day care facility which complies with such staffing standards, and if the day care facility providing care for such children complies with applicable State standards,[28] and (V) in determining whether applicable staffing standards are met in the case of day care provided in a family day care home, the number of children being cared for in such home shall include a child of the mother who is operating the home only if such child is under age 6,[29]

except as provided in subparagraph (B).

(B) The Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives, after December 31,

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[26] P.L. 96-272, § 103(e), deleted "422" and substituted "423", effective June 17, 1980.

[26A] As in original. Should be "(III)".

[27] See P.L. 93-647, § 7(a)(3), with respect to staffing standards for children between 6 weeks and 6 years of age, in Vol. II, p. 1645.

[28] P.L. 94-401, § 5(a)(2), added subdivision (IV), effective September 7, 1976.

[29] P.L. 94-401, § 5(a)(2), added subdivision (V), effective for the period beginning October 1, 1975, and ending September 30, 1977.

P.L. 95-171, § 1(b), effective October 1, 1977, extended the effective closing date from "September 30, 1977" to "September 30, 1978".

1976, and prior to April 1, 1978[30], an evaluation of the appropriateness of the requirements imposed by subparagraph (A), together with any recommendations he may have for modification of those requirements. No earlier than ninety days after the submission of that report, the Secretary may, by regulation, make such modifications in the requirements imposed by subparagraph (A) as he determines are appropriate.

(C) The requirements imposed by this paragraph are in lieu of any requirements that would otherwise be applicable under section 522(d) of the Economic Opportunity Act of 1964[31] to child day care services with respect to which payment is made under this section.[32]

(D) The requirements imposed by this paragraph or by any regulations promulgated by the Department of Health and Human Services to carry out this paragraph shall be inapplicable to child day care services provided after June 30, 1980, and prior to July 1, 1981, which meet applicable standards of State and local law.[33]

(10) No payment may be made under this section with respect to any expenditure for the provision of any educational service which the State makes generally available to its residents without cost and without regard to their income.

(11) No payment may be made under this section with respect to any expenditure for the provision of any service to any individual living in any hospital, skilled nursing facility, or intermediate care facility (including any such hospital or facility for mental diseases or for the mentally retarded), any prison, or any foster family home except—

(A) any expenditure for the provision of a service that (i) is provided by other than the hospital, facility, prison, or foster family home in which the individual is living, and (ii) is provided, under the State's program for the provision of the services described in paragraph (1), to individuals who are not living in a hospital, skilled nursing facility, intermediate care facility, prison, or foster family home,

(B) any expenditure which is for the cost, in addition to the cost of basic foster care, of the provision, by a foster family home, to an individual living in that home, of a service which meets a special need of that individual, as determined under regulations prescribed by the Secretary,

(C) any expenditure for the provision of emergency shelter provided to a child, for not in excess of thirty days, as a protective service;

(D) any expenditure for the initial detoxification of an alcoholic or drug dependent individual, for a period not to exceed 7 days, if such detoxification is integral to the further provision

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[30] P.L. 95-59, § 5, deleted "July 1, 1977" and substituted "April 1, 1978", effective June 30, 1977.

[31] As in original. P.L. 93-644, § 8(c), redesignated § 522 as § 582, effective January 4, 1975. Reference herein should also be redesignated. See P.L. 88-452 (Economic Opportunity Act of 1964), § 582, in Vol. II, p. 1411.

[32] See P.L. 93-647, § 3(f), with respect to child day care service provided under any plan of a State approved under part A, or developed under part B, of title IV of this act, in Vol. II, p. 1644.

[33] P.L. 96-499, § 1001(a), added subparagraph (D), effective December 5, 1980.

of services for which such individual would otherwise be eligible under this title[34]; and

(E) any expenditure for the provision of emergency shelter, for not in excess of thirty days in any six-month period, provided as a protective service to an adult in danger of physical or mental injury, neglect, maltreatment, or exploitation.[35]

(12) No payment may be made under this section with respect to any expenditure for the provision of cash payments as a service.

(13) No payment may be made under this section with respect to any expenditure for the provision of any service to any individual to the extent that the provider of the service or the individual receiving the service is eligible to receive payment under title XVIII with respect to the provision of the service.

(14)(A) For purposes of paragraphs (5) and (6), an individual shall, at the option of the State, be deemed to be an individual described in paragraph (5)(B) if, because of the geographic area in which any particular service is provided to him, the characteristics of the community to which it is provided, the nature of the service, the conditions (other than income) of eligibility to receive it, or other factors surrounding its provision, the State may reasonably conclude, without individual determinations of eligibility, that substantially all of the persons who receive the service are members of families with a monthly gross income which is not more than 90 per centum of the median income of a family of four in the State, adjusted (in accordance with regulations prescribed by the Secretary) to take into account the size of the family.

(B) The provisions of subparagraph (A) shall not be applicable to child day care services furnished to any child other than a child of a migratory agricultural worker.[36]

(15) No payment may be made under this section with respect to any expenditure for the provision of any health related service if such service is provided by an entity which has failed to comply with a request made by the Secretary or State agency under section 2003(d)(1)(J), for so long as such entity remains in noncompliance with such request.[37]

(16) Any State may refuse to enter into a contract or other arrangement with a provider of services for purposes of participation under the program established by this title, or otherwise to approve a provider for such purposes, if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing

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[34] P.L. 94-120, § 4(b)(2), added subparagraph (D). It is effective from and after October 1, 1975.
P.L. 94-120, § 4(c), made the above-described amendment effective only for the period beginning October 1, 1975, and ending January 31, 1976.
P.L. 94-401, § 6, effective February 1, 1976, extended the closing effective date from "January 31, 1976" to "September 30, 1977".
P.L. 95-171, § 1(c), effective October 1, 1977, extended the closing effective date from "September 30, 1977" to "September 30, 1978".
P.L. 96-178, § 5(a), amended that effective date by deleting "only for the period beginning October 1, 1975, and ending September 30, 1978" and substituting "from and after October 1, 1975.", effective January 2, 1980, with respect to services provided during the period October 1, 1978, through March 31, 1980.
P.L. 96-272, § 209, effective June 17, 1980, amended that effective date by deleting "during the period beginning October 1, 1978, and ending March 31, 1980" and substituting "on or after October 1, 1978".

[35] P.L. 96-272, § 205(a)(3), added subparagraph (E), effective on and after October 1, 1979.

[36] P.L. 94-401, § 1(a), added paragraph (14), effective October 1, 1975.

[37] P.L. 95-142, § 3(d)(2), added paragraph (15), effective January 1, 1978.

employee (as defined in section 1126(b)) of such provider, is a person described in section 1126(a), and the State may terminate any such contract, arrangement, or approval if it determines that the provider did not fully and accurately make any disclosure required of it by section 1126(a) at the time the contract or arrangement was entered into or the approval was given.[38]

(17)(A) The total payment to a State under this section with respect to expenditures during any fiscal year for the provision of child day care services under this title (including expenditures for grants to qualified providers under section 2007) shall be equal to 100 per centum of such expenditures to the extent that such expenditures (during that fiscal year) do not exceed—

(i) an amount which bears the same ratio to $200,000,000 as the amount of the State's limitation under paragraph (2)(A) bears to the indexed ceiling amount for such fiscal year, in the case of fiscal year 1980 and fiscal year 1981; or

(ii) 8 per centum of the State's limitation under paragraph (2)(A) for such fiscal year, in the case of fiscal year 1982 and any subsequent fiscal year.

(B) Federal funds payable to a State under this title (with respect to expenditures for child day care services) at the rate specified in subparagraph (A) shall, to the maximum extent that the State determines to be feasible, be employed in such a way as to increase the employment of welfare recipients and other low-income persons in jobs related to the provision of child day care services.[39]

(18) Effective October 1, 1981, no payment may be made under this section for training or retraining expenditures except in accordance with a training plan approved by the Secretary which, at a minimum—

(A) describes how training needs were assessed and how the assessment was used to structure the training programs, the individuals to be trained, and the training resources to be used;

(B) demonstrates that the training activities have a direct relationship to the title XX services program and to the State's staffing needs to carry out the title XX services program; and

(C) describes the State agency's plan to monitor training programs and to evaluate the agency's overall staff training and development program.[40]

(b)(1) Prior to the beginning of each quarter the Secretary shall estimate the amount to which a State will be entitled under this section for that quarter on the basis of a report filed by the State containing its estimate of the amount to be expended during that quarter with respect to which payment must be made under this section, together with an explanation of the bases for that estimate.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to the

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[38] P.L. 95-142, § 8(d), added paragraph (16), effective with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after February 1, 1978.

[39] P.L. 96-272, § 202(a), added paragraph (17), effective June 17, 1980.

[40] P.L. 96-272, § 203(c), added paragraph (18), effective June 17, 1980.

State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

PROGRAM REPORTING

SEC. 2003. [42 U.S.C. 1397b] (a) Each State which participates in the program established by this title shall make such reports concerning its use of Federal social services funds as the Secretary may by regulation provide.

(b) Each State which participates in the program established by this title shall assure that the aggregate expenditures from appropriated funds from the State and political subdivisions thereof for the provision of services during each fiscal year (as selected by the State under section 2004(1)) within each services program period [41] (as established under the requirements of section 2002(a)(3)) with respect to which payment is made under section 2002 is not less than the aggregate expenditures from such appropriated funds for the provision of those services during the fiscal year ending June 30, 1973, or the fiscal year ending June 30, 1974, with respect to which payment was made under the plan of the State approved under title I, VI [41A], X, XIV, or XVI, or part A of title IV, whichever is less, except that the requirements of this subsection shall not apply to any State for any services program period [42] if the payment to the State under section 2002, for each fiscal year any part of which is included in that services program year, with respect to expenditures other than expenditures for personnel training or retraining directly related to the provision of services, equals the allotment of the State for that fiscal year under section 2002(a)(2).

(c)(1) If the Secretary, after reasonable notice and an opportunity for a hearing to the State, finds that there is a substantial failure to comply with any of the requirements imposed by subsections (a) and (b) of this section, he shall, except as provided in paragraph (2), notify the State that further payments will not be made to the State under section 2002 until he is satisfied that there will no longer be any such failure to comply, and until he is so satisfied he shall make no further payments to the State.

(2) The Secretary may suspend implementation of any termination of payments under paragraph (1) for such period as he determines appropriate and instead reduce the amount otherwise payable to the State under section 2002 for expenditures during that period by 3 per centum for each of subsections (a) and (b) of this section with respect to which there was a finding of substantial noncompliance and with respect to which he is not yet satisfied that there will no longer be any such failure to comply.

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[41] P.L. 96-272, § 206(c)(1), deleted "each services program year" and substituted "each fiscal year (as selected by the State under section 2004(1)) within each services program period", effective with respect to services program periods beginning after June 17, 1980.

[41A] As in original. Reference to title VI should be deleted as title VI was repealed.

[42] P.L. 96-272, § 206(c)(2), deleted "year" and substituted "period", effective with respect to services program periods beginning after June 17, 1980.

(d)(1) Each State which participates in the program established by this title shall have a plan applicable to its program for the provision of the services described in section 2002(a)(1) which—

(A) provides that an opportunity for a fair hearing before the appropriate State agency will be granted to any individual whose claim for any service described in section 2002(a)(1) is denied or is not acted upon with reasonable promptness;

(B) provides safeguards which restrict [43] the use or disclosure of information obtained in connection with administration of the State's program for the provision of the services described in section 2002(a)(1) concerning applicants for and recipients of those services [44] to purposes directly connected with (A) [45] [45A] the administration of that program, the plan of the State approved under part A of title IV, the plan of the State developed under part B of that title, the supplemental security income program established by title XVI, or the plan of the State approved under title XIX, and (B) [45] any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (B) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient;[46]

(C) provides for the designation, by the chief executive officer of the State or as otherwise provided by the laws of the State, of an appropriate agency which will administer or supervise the administration of the State's program for the provision of the services described in section 2002(a)(1);

(D) provides that the State will, in the administration of its program for the provision of the services described in section 2002(a)(1), use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the program, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(E) provides that no durational residency or citizenship requirement will be imposed as a condition to participation in the program of the State for the provision of the services described in section 2002(a)(1);

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[43] P.L. 96-265, § 403(b)(1), deleted "that" and substituted "safeguards which restrict", effective September 1, 1980.

[44] P.L. 96-265, § 403(b)(2), deleted "will be restricted", effective September 1, 1980.

[45] As in original. To avoid confusion, clauses (A) and (B) should be redesignated as clauses (i) and (ii), respectively.

[45A] P.L. 96-265, § 403(b)(3), inserted "(A)", effective September 1, 1980.

[46] P.L. 96-265, § 403(b)(4), inserted ", and (B) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (B) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient;", effective September 1, 1980. As in original; one semicolon should be deleted.

(F) provides, if the State program for the provision of the services described in section 2002(a)(1) includes services to individuals living in institutions or foster homes, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions or homes which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admissions policies, safety, sanitation, and protection of civil rights;

(G) provides, if the State program for the provision of the services described in section 2002(a)(1) includes child day care services, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such services which are reasonably in accord with recommended standards of national organizations concerned with standards for such services, including standards related to admission policies for facilities providing such services, safety, sanitation, and protection of civil rights;

(H) provides that the State's program for the provision of the services described in section 2002(a)(1) will be in effect in all political subdivisions of the State;

(I) provides for financial participation by the State in the provision of the services described in section 2002(a)(1);

(J) provides that any entity (other than an individual practitioner or a group of practitioners) receiving payments for the provision of health related services complies with the requirements of section 1124, and supplies (within such period as may be specified in regulations by the Secretary or by the State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, respectively, (i) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (ii) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor; [47] and

(K) provides that the State will bar any specified individual from participation in the program for the period specified by the Secretary when required by him to do so pursuant to section 1128, and provides that no payment may be made under the program with respect to any item or service furnished by such individual during such period.[48]

Notwithstanding clause (C), if on December 1, 1974, the State agency which administered or supervised the administration of the portion of the plan of the State for services to the aged, blind, or

[47] P.L. 95-142, § 3(d)(1), added subparagraph (J), effective January 1, 1978.
[48] P.L. 96-499, § 913(e)(3), added subparagraph (K), effective December 5, 1980.

disabled approved under title VI of this Act which related to blind individuals was different from the agency which administered or supervised the administration of the rest of that plan, the State agency which administered or supervised the administration of the portion of the plan of the State for services to the aged, blind, or disabled related to blind individuals may be designated to administer or supervise the administration of the portion of the State's program for the provision of the services described in section 2002(a)(1) related to blind individuals and a separate State agency may be designated to administer or supervise the administration of the rest of the program; and in such case the part of the program which each agency administers, or the administration of which each agency supervises, shall be regarded as a separate program for the provision of the services described in section 2002(a)(1) for purposes of this title.[48A] The date selected by the State pursuant to section 2004(1) as the beginning of the services program period [49] for each of the separate programs shall be the same.

(2) The Secretary shall approve any plan which complies with the provisions of paragraph (1).

(e)(1) No payment may be made under section 2002 to any State which does not have a plan approved under subsection (d) [50].

(2) In the case of any State plan which has been approved by the Secretary under subsection (d), if the Secretary, after reasonable notice and an opportunity for a hearing to the State, finds—

(A) that the plan no longer complies with the provisions of subsection (d)(1), or

(B) that in the administration of the plan there is a substantial failure to comply with any such provision,

the Secretary shall, except as provided in paragraph (3), notify the State that further payments will not be made to the State under section 2002 until he is satisfied that there will no longer be any such failure to comply, and until he is so satisfied he shall make no further payments to the State.

(3) The Secretary may suspend implementation of any termination of payments under paragraph (2) for such period as he determines appropriate and instead reduce the amount otherwise payable to the State under section 2002 for expenditures during that period by 3 percent for each clause of subsection (d)(1) with respect to which there is a finding of noncompliance and with respect to which he is not yet satisfied that there will no longer be any such failure to comply.

(f) The provisions of section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [51] shall be applicable to services provided by any State pursuant to this title with respect to individuals suffering from drug addiction or alcoholism.[52]

[48A] As in original. This sentence should be deleted as title VI of this Act has been repealed.

[49] P.L. 96-272, § 206(d), deleted "year" and substituted "period", effective with respect to services program periods beginning after June 17, 1980.

[50] P.L. 96-473, § 6(l), deleted "(g)" and substituted "(d)", effective October 19, 1980.

[51] P.L. 91-616, § 333, in Vol. II, p. 1454.

[52] P.L. 94-120, § 4(a), added subsection (f). It is effective from and after October 1, 1975. P.L. 94-120, § 4(c), made the above-described amendment effective only for the period beginning October 1, 1975, and ending January 31, 1976.

Continued

SERVICES PROGRAM PLANNING [53]

SEC. 2004. [42 U.S.C. 1397c] A State's services program planning meets the requirements of this section if, for the purpose of assuring public participation in the development of the program for the provision of the services described in section 2002(a)(1) within the State—

(1) for each services program period, the beginning of the fiscal year of the Federal Government, the State government, or the political subdivisions of such State is established as the beginning of the State's services program period, and the end of such fiscal year, the succeeding fiscal year, or the second succeeding fiscal year is established as the end of the State's services program period; and [54]

(2) at least ninety days prior to the beginning of the State's services program period [55], the chief executive officer of the State, or such other official as the laws of the State provide, publishes and makes generally available (as defined in regulations prescribed by the Secretary after consideration of State laws governing notice of actions by public officials) to the public a proposed comprehensive [56] services program plan prepared by the agency designated pursuant to the requirements of section 2003(d)(1)(C) and, unless the laws of the State provide otherwise, approved by the chief executive officer, which sets forth the State's plan for the provision of the services described in section 2002(a)(1) during that period [57], including—

(A) the objectives to be achieved under the program,

(B) the services to be provided under the program, including at least one service directed at at least one of the goals in each of the five categories of goals set forth in section 2002(a)(1) (as determined by the State) and including at least three types of services (selected by the State) for individuals who are recipients of supplemental security income benefits under title XVI and who are in need of such services, together with a definition of those services and a description of their relationship to the objectives to be achieved under the program and the goals described in section 2002(a)(1),

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P.L. 94-401, § 6, effective February 1, 1976, extended the closing effective date from "January 31, 1976" to "September 30, 1977".

P.L. 95-171, § 1(c), effective October 1, 1977, extended the closing effective date from "September 30, 1977" to "September 30, 1978".

P.L. 96-178, § 5(a), amended that effective date by deleting "only for the period beginning October 1, 1975, and ending September 30, 1978" and substituting "from and after October 1, 1975.", effective January 2, 1980, with respect to services provided during the period beginning October 1, 1978, and ending March 31, 1980.

P.L. 96-272, § 209, effective June 17, 1980, amended that effective date by deleting "during the period beginning October 1, 1978, and ending March 31, 1980" and substituting "on or after October 1, 1978".

[53] See § 1616(e) of this act with respect to standards for group living arrangements.

[54] P.L. 96-272, § 206(a), amended paragraph (1) in its entirety, effective with respect to services program periods beginning after June 17, 1980. For paragraph (1) as it formerly read, see Vol. II, p. 1833.

[55] P.L. 96-272, § 206(b)(1), deleted "year" and substituted "period", effective with respect to services program periods beginning after June 17, 1980.

[56] P.L. 96-272, § 206(b)(2), deleted "annual", effective with respect to services program periods beginning after June 17, 1980.

[57] P.L. 96-272, § 206(b)(3), deleted "year" and substituted "period", effective with respect to services program periods beginning after June 17, 1980.

(C) the categories of individuals to whom those services are to be provided, including any categories based on the income of individuals or their families,

(D) the geographic areas in which those services are to be provided, and the nature and amount of the services to be provided in each area,

(E) a description of the planning, evaluation, and reporting activities to be carried out under the program,

(F) the sources of the resources to be used to carry out the program,

(G) a description of the organizational structure through which the program will be administered, including the extent to which public and private agencies and volunteers will be utilized in the provision of services,

(H) a description of how the provision of services under the program will be coordinated with the plan of the State approved under part A of title IV, the plan of the State developed under part B of that title, the supplemental security income program established by title XVI, the plan of the State approved under title XIX, and other programs for the provision of related human services within the State, including the steps taken to assure maximum feasible utilization of services under these programs to meet the needs of the low income population,

(I) the estimated expenditures under the program, including estimated expenditures with respect to each of the services to be provided, each of the categories of individuals to whom those services are to be provided, and each of the geographic areas in which those services are to be provided, and a comparison between estimated non-Federal expenditures under the program and non-Federal expenditures for the provision of the services described in section 2002(a)(1) in the State during the preceding services program period [58], and

(J) a description of the steps taken, or to be taken, to assure that the needs of all residents of, and all geographic areas in, the State were taken into account in the development of the plan; and

(3) public comment on the proposed plan is accepted for a period of at least forty-five days; and

(4) at least forty-five days after publication of the proposed plan and prior to the beginning of the State's services program period [59], the chief executive officer of the State, or such other official as the laws of the State provide, publishes a final comprehensive [60] services program plan prepared by the agency designed pursuant to the requirements of section 2003(d)(1)(C) and, unless the laws of the State provide otherwise, approved by the chief executive officer, which sets forth

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[58] P.L. 96-272, § 206(b)(1), deleted "year" and substituted "period", effective with respect to services program periods beginning after June 17, 1980.

[59] P.L. 96-272, § 206(b)(1), deleted "year" and substituted "period", effective with respect to services program periods beginning after June 17, 1980.

[60] P.L. 96-272, § 206(b)(2), deleted "annual", effective with respect to services program periods beginning after June 17, 1980.

the same information required to be included in the proposed plan, together with an explanation of the differences between the proposed and final plan and the reasons therefor; and

(5) any amendment to a final comprehensive services program plan is prepared by the agency designated pursuant to section 2003(d)(1)(C), approved by the chief executive officer of the State unless the laws of the State provide otherwise, and published by the chief executive officer of the State, or such other official as the laws of the State provide, as a proposed amendment on which public comment is accepted for a period of at least thirty days, and then prepared by the agency designated pursuant to section 2003(d)(1)(C), approved by the chief executive officer of the State unless the laws of the State provide otherwise, and published by the chief executive officer of the State, or such other official as the laws of the State provide, as a final amendment, together with an explanation of the differences between the proposed and final amendment and the reasons therefor [61]; and

(6) in the case of a State that adopts a services program planning period of longer than one year, the State agency publishes and makes generally available such information concerning the comprehensive services program at such times as the Secretary may by regulation require.[62]

EFFECTIVE DATE OF REGULATIONS PUBLISHED BY THE SECRETARY [63]

SEC. 2005. [42 U.S.C. 1397d] No final regulation published by the Secretary under this title shall be effective with respect to payments under section 2002 for expenditures during any quarter commencing before the beginning of the first services program period [64] established by the State under the requirements of section 2002(a)(3) which begins at least sixty days after the publication of the final regulation.

EVALUATION; PROGRAM ASSISTANCE [65]

SEC. 2006. [42 U.S.C. 1397e] (a) The Secretary shall provide for the continuing evaluation of State programs for the provision of the services described in section 2002(a)(1).

(b) The Secretary shall make available to the States assistance with respect to the content of their services program, and their services program planning, reporting, administration, and evaluation.

(c) Within six months after the close of each fiscal year, the Secretary shall submit to the Congress a report on the operation of the program established by this title during that year, including—

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[61] See P.L. 93-647, § 7(a)(2), with respect to the period covered by the first services program year, in Vol. II, p. 1645.

[62] P.L. 96-272, § 206(b)(5), added paragraph (6), effective with respect to services program periods beginning after June 17, 1980.

[63] See P.L. 93-233, § 12(a) footnote, with respect to postponement of social services regulations, in Vol. II, p. 1615.

[64] P.L. 96-272, § 206(d), deleted "year" and substituted "period", effective with respect to services program periods beginning after June 17, 1980.

[65] See P.L. 93-647, § 4, with respect to the Secretary's report to Congress on the effectiveness of the program established by title XX, in Vol. II, p. 1644.

See P.L. 95-142, § 18, with respect to the report on home health and other in-home services, in Vol. II, p. 1677.

(1) the evaluations carried out under subsection (a) and the results obtained therefrom, and

(2) the assistance provided under subsection (b) during that year.[66]

CHILD DAY CARE SERVICES[67]

SEC. 2007. [42 U.S.C. 1397e–1] (a) Subject to subsection (b), sums granted by a State to a qualified provider of child day care services (as defined in subsection (c)) to assist such provider in meeting its work incentive program expenses (as defined in subsection (c)) with respect to individuals employed in jobs related to the provision of child day care services in one or more child day care facilities of such provider, shall be deemed for purposes of section 2002 to constitute expenditures made by the State in accordance with the provisions of this title for the provision of child day care services.

(b) The provisions of subsection (a) shall not be applicable with respect to any grant made to a particular qualified provider of child day care services to the extent that (as determined by the Secretary) such grant is or will be used to pay wages to any employee at an annual rate in excess of $6,000, in the case of a public or nonprofit private provider, or at an annual rate in excess of $5,000, or to pay more than 80 per centum of the wages of any employee, in the case of any other provider.

(c) For purposes of this subsection—

(1) the term "qualified provider of child day care services", when used in reference to a recipient of a grant by a State, includes a provider of such services only if, of the total number of children receiving such services from such provider in the facility with respect to which the grant is made, at least 20 per centum thereof have some or all of the costs for the child day care services so furnished to them by such provider paid for under the State's services program conducted pursuant to this title; and

(2) the term "work incentive program expenses" means expenses of a qualified provider of child day care services which constitute work incentive program expenses as defined in section 50B(a)(1) of the Internal Revenue Code of 1954, or which would constitute work incentive program expenses as so defined if the provider were a taxpayer entitled to a credit (with respect to the wages involved) under section 40 of such Code.

DEFINITIONS

SEC. 2008. [42 U.S.C. 1397f][68] For purposes of this title—

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[66] See P.L. 94-274, § 101(d), with respect to the due date for the report covering the period of July 1, 1976, through September 30, 1976, in Vol. II, p. 1660.

[67] P.L. 96-178, § 4(b), added this § 2007, effective January 2, 1980, with respect to grants made to qualified providers of child day care services during October 1, 1979, through March 31, 1980.

P.L. 96-272, § 208(a), effective June 17, 1980, amended that effective date by deleting "during the period beginning October 1, 1979, and ending March 31, 1980" and substituting "on or after October 1, 1979".

[68] P.L. 96-178, § 4(b), redesignated this § 2007 as § 2008, effective January 2, 1980, with respect to grants made to qualified providers of child day care services during the period of October 1, 1979, through March 31, 1980.

P.L. 96-272, § 208(a), effective June 17, 1980, amended that effective date by deleting "during the period beginning October 1, 1979, and ending March 31, 1980" and substituting "on or after October 1, 1979".

(1) the term "State supplementary payment" means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under title XVI or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits, as determined by the Secretary, and

(2) the term "State" means the fifty States and the District of Columbia.

SELECTED PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954 [1]

(P.L. 83-591, Approved August 16, 1954)

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Subtitle A—Income Taxes

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

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SEC. 1401. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning before January 1, 1978, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year;

(2) in the case of any taxable year beginning after December 31, 1977, and before January 1, 1979, the tax shall be equal to 7.10 percent of the amount of the self-employment income for such taxable year;

(3) in the case of any taxable year beginning after December 31, 1978, and before January 1, 1981, the tax shall be equal to 7.05 percent of the amount of the self-employment income for such taxable year;

(4) in the case of any taxable year beginning after December 31, 1980, and before January 1, 1982, the tax shall be equal to 8.00 percent of the amount of the self-employment income for such taxable year;

(5) in the case of any taxable year beginning after December 31, 1981, and before January 1, 1985, the tax shall be equal to 8.05 percent of the amount of the self-employment income for such taxable year;

(6) in the case of any taxable year beginning after December 31, 1984, and before January 1, 1990, the tax shall be equal to 8.55 percent of the amount of the self-employment income for such taxable year; and

(7) in the case of any taxable year beginning after December 31, 1989, the tax shall be equal to 9.30 percent of the amount of the self-employment income for such taxable year.

(b) HOSPITAL INSURANCE.—In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1973, and before January 1, 1978, the tax shall be equal to 0.90 percent of the amount of the self-employment income for such taxable year;

(2) in the case of any taxable year beginning after December 31, 1977, and before January 1, 1979, the tax shall be equal to

1.00 percent of the amount of the self-employment income for such taxable year;

(3) in the case of any taxable year beginning after December 31, 1978, and before January 1, 1981, the tax shall be equal to 1.05 percent of the amount of the self-employment income for such taxable year;

(4) in the case of any taxable year beginning after December 31, 1980, and before January 1, 1985, the tax shall be equal to 1.30 percent of the amount of the self-employment income for such taxable year;

(5) in the case of any taxable year beginning after December 31, 1984, and before January 1, 1986, the tax shall be equal to 1.35 percent of the amount of the self-employment income for such taxable year; and

(6) in the case of any taxable year beginning after December 31, 1985, the tax shall be equal to 1.45 percent of the amount of the self-employment income for such taxable year.

(c) RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

SEC. 1402. DEFINITIONS.

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) there shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as deter-

mined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) there shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) there shall be excluded any gain or loss—

(A) which is considered as gain or loss from the sale or exchange of a capital asset,

(B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or

(C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither—

(i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor

(ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) the deduction for net operating losses provided in section 172 shall not be allowed;

(5) if—

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and

(B) any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to section 933;

(7) the deduction for personal exemptions provided in section 151 shall not be allowed;

(8) an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4)

without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), section 911 (relating to income earned by employees in certain camps) and section 931 (relating to income from sources within possessions of the United States);

(9) the term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa;

(10) there shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(11) in the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) shall not apply; and

(12) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by

him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than $2,400, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or

business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (h), or by a partnership of which an individual is a member on a regular basis as defined in subsection (h), but only if such individual's net earnings from self-employment as determined without regard to this sentence in the taxable year are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such years exceed $1,600.

(b) SELF-EMPLOYMENT INCOME.—The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year; except that such term shall not include—

(1) that part of the net earnings from self-employment which is in excess of (i) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which such taxable year begins, minus (ii) the amount of the wages paid to such individual during such taxable years; or

(2) the net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121 (1) (relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corporations), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), and (B) includes compensation which is subject to the tax imposed by section 3201 or 3211. An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual.

(c) TRADE OR BUSINESS.—The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensat-

ed solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

(2) the performance of service by an individual as an employee, other than—

(A) service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) service described in section 3121(b)(16),

(C) service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act, and

(F) service described in section 3121(b)(20);

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

(d) EMPLOYEE AND WAGES.—The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

(e) MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS.—

(1) EXEMPTION.—Any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which

makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act), shall receive an exemption from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

(2) TIME FOR FILING APPLICATION.—Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsection (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5); or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1967.

(3) EFFECTIVE DATE OF EXEMPTION.—An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5), and for all succeeding taxable years. An exemption received pursuant to this subsection shall be irrevocable.

(f) PARTNER'S TAXABLE YEAR ENDING AS THE RESULT OF DEATH.—In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) [1] MEMBERS OF CERTAIN RELIGIOUS FAITHS.

(1) EXEMPTION.—Any individual may file an application (in such form and manner, and with such official, as may be

[1] P.L. 94-455, § 1910(a)(155) deleted former subsection (g) and redesignated subsection (h) as (g).

prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Secretary of Health, Education, and Welfare finds that—

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) TIME FOR FILING APPLICATION.—For purposes of this subsection, an application must be filed on or before the time prescribed for filing the return (including any extension thereof) for the first taxable year for which the individual has self-employment income (determined without regard to this subsection or subsection (c)(6)), except that an application filed after such date but on or before the last day of the third calendar month following the calendar month in which the taxpayer is first notified in writing by the Secretary that a timely application for an exemption from the tax imposed by this chapter has not been filed by him shall be deemed to be filed timely.

(3) PERIOD FOR WHICH EXEMPTION EFFECTIVE.—An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after Decem-

ber 31, 1950, except that such exemption shall not apply for any taxable year—

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(4) APPLICATION BY FIDUCIARIES OR SURVIVORS.—In any case where an individual who has self-employment income dies before the expiration of the time prescribed by paragraph (2) for filing an application for exemption pursuant to this subsection, such an application may be filed with respect to such individual within such time by a fiduciary acting for such individual's estate or by such individual's survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act).

(h)[2] REGULAR BASIS.—An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

SEC. 1403. MISCELLANEOUS PROVISIONS.

(a) TITLE OF CHAPTER.—This chapter may be cited as the "Self-Employment Contributions Act of 1954".

(b) CROSS REFERENCES.—

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(3) For provisions relating to declarations of estimated tax on self-employment income, see section 6015.

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Subtitle C—Employment Taxes

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter A—Tax on Employees

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[2] P.L. 94-455, § 1910(a)(155) redesignated subsection (i) as (h).

SEC. 3101. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 4.95 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 5.05 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 5.08 percent;

(4) with respect to wages received during the calendar year 1981, the rate shall be 5.35 percent;

(5) with respect to wages received during the calendar years 1982 through 1984, the rate shall be 5.40 percent;

(6) with respect to wages received during the calendar years 1985 through 1989, the rate shall be 5.70 percent; and

(7) with respect to wages received after December 31, 1989, the rate shall be 6.20 percent.

(b) HOSPITAL INSURANCE.—In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages received during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages received after December 31, 1985, the rate shall be 1.45 percent.

(c) RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

SEC. 3102. DEDUCTION OF TAX FROM WAGES.

(a) REQUIREMENT.—The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar quarter pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of

such remuneration paid to the employee by the employer in the calendar quarter is less than $50; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) INDEMNIFICATION OF EMPLOYER.—Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(c) SPECIAL RULE FOR TIPS.—

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the year) in which the tips were deemed paid, by deducting the amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following year) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such year as if the tips so estimated constituted the actual tips so reported, and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such year (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the year to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the year.

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

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SEC. 3111. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a) and (t)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 4.95 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 5.05 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 5.08 percent;

(4) with respect to wages paid during the calendar year 1981, the rate shall be 5.35 percent;

(5) with respect to wages paid during the calendar years 1982 through 1984, the rate shall be 5.40 percent;

(6) with respect to wages paid during the calendar years 1985 through 1989, the rate shall be 5.70 percent; and

(7) with respect to wages paid after December 31, 1989, the rate shall be 6.20 percent.

(b) HOSPITAL INSURANCE.—In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a) and (t)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

(c) RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

SEC. 3112. INSTRUMENTALITIES OF THE UNITED STATES.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

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SEC. 3121. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the proper-

ty used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability,

or

(D) death;

(3) any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a), or

(D) under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219 for such payment;

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7) (A) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "domestic service in a private home of the employer" does not include service described in subsection (g)(5);

(C) cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g)(5);

(8)(A) remuneration paid in any medium other than cash for agricultural labor;

(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (ii) the employee performs agricultural labor for the employer on 20 days or more during such year for cash remuneration computed on a time basis;

(9) any payment (other than vacation or sick pay) made to an employee after the month in which he attains age 62, if such employee did not work for the employer in the period for which such payment is made;

(10) remuneration paid by an employer in any calendar year to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(11) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217;

(12)(A) tips paid in any medium other than cash;

(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(13) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, (ii) retirement for disability, or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(14) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(15) any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(17) any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans); or

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

(b) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service, of whatever nature, performed either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and

in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that such term shall not include—

(1) service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (7 U.S.C. 1461–1468), or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) service performed by an individual in the employ of his spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(6)(A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) service performed in the employ of a corporation which is wholly owned by the United States;

(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

(C) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) in the legislative branch;

(iii) in a penal institution of the United States by an inmate thereof;

(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service which, under subsection (j), constitutes covered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis; or

(D) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by

such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply;

(8)(A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under subsection (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a), but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to subsection (k) (or the corresponding subsection of prior law) or deemed to have been so filed under paragraph (4) or (5) of such subsection, is in effect if such service is performed by an employee—

(i) whose signature appears on the list filed (or deemed to have been filed) by such organization under subsection (k) (or the corresponding subsection of prior law),

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a certificate referred to in clause (iii)) was filed (or deemed to have been filed), or

(iii) who, after the calendar quarter in which the certificate was filed (or deemed to have been filed) with respect to a group described in section 3121(k)(1)(E), became a member of such group,

except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) with respect to which no certificate is (or is deemed to be) in effect;

(9) service performed by an individual as an employee or employee representative as defined in section 3231;

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section

218(c)(5) of the Social Security Act are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international organization;

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));

(19) service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or

(20) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

(c) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee

for the person employing him, where any of such service is excepted by subsection (b)(9).

(d) EMPLOYEE.—For purposes of this chapter, the term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(e) STATE, UNITED STATES, AND CITIZEN.—For purposes of this chapter—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) UNITED STATES.—The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(f) AMERICAN VESSEL AND AIRCRAFT.—For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign

country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(g) AGRICULTURAL LABOR.—For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations,

ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) AMERICAN EMPLOYER.—For purposes of this chapter, the term "American employer" means an employer which is—

(1) the United States or any instrumentality thereof,

(2) an individual who is a resident of the United States,

(3) a partnership, if two-thirds or more of the partners are residents of the United States,

(4) a trust, if all of the trustees are residents of the United States, or

(5) a corporation organized under the laws of the United States or of any State.

(i) COMPUTATION OF WAGES IN CERTAIN CASES.—

(1) DOMESTIC SERVICE.—For purposes of this chapter, in the case of domestic service described in subsection (a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(7)(B).

(2) SERVICE IN THE UNIFORMED SERVICES.—For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act.

(3) PEACE CORPS VOLUNTEER SERVICE.—For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only amounts paid pursuant to section 5(c) or 6(1) of the Peace Corps Act.

(4) SERVICE PERFORMED BY CERTAIN MEMBERS OF RELIGIOUS ORDERS.—For purposes of this chapter, in any case where an individual is a member of a religious order (as defined in subsection (r)(2)) performing service in the exercise of duties required by such order, and an election of coverage under subsection (r) is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a)(1), include as such individual's remuneration for such service the fair market value of any board,

lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

(j) COVERED TRANSPORTATION SERVICE.—For purposes of this chapter—

(1) EXISTING TRANSPORTATION SYSTEMS—GENERAL RULE.—Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) EXISTING TRANSPORTATION SYSTEMS—CASES IN WHICH NO TRANSPORTATION EMPLOYEES, OR ONLY CERTAIN EMPLOYEES, ARE COVERED.—Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee,

contain special provisions applicable only to employees described in subparagraph (C).

(3) TRANSPORTATION SYSTEMS ACQUIRED AFTER 1950.—All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) DEFINITIONS.—For purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such terms shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of—

(i) a State,

(ii) one or more political subdivisions of a State, or

(iii) a State and one or more of its political subdivisions.

(k) EXEMPTION OF RELIGIOUS, CHARITABLE, AND CERTAIN OTHER ORGANIZATIONS.—

(1) WAIVER OF EXEMPTION BY ORGANIZATION.— [3]

(A) An organization described in section 501(c)(3) which is exempt from income tax under section 501(a) may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees. Such certificate may be filed only if it is accompanied by a list containing the signature, address, and social security account number (if any) of each employee (if any) who concurs in the filing of the certificate. Such list may be

[3] See P.L. 96-605, § 401, with respect to treatment of certain waivers, in Vol. II, p. 1745.

amended at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed by filing with the prescribed official a supplemental list or lists containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate. The list and any supplemental list shall be filed in such form and manner as may be prescribed by regulations made under this chapter.

(B) The certificate shall be in effect (for purposes of subsection (b)(8)(B) and for purposes of section 210(a)(8)(B) of the Social Security Act) for the period beginning with whichever of the following may be designated by the organization:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

(C) In the case of service performed by an employee whose name appears on a supplemental list filed after the first month following the calendar quarter in which the certificate is filed, the certificate shall be in effect (for purposes of subsection (b)(8)(B) and for purposes of section 210(a)(8)(B) of the Social Security Act) only with respect to service performed by such individual for the period beginning with the first day of the calendar quarter in which such supplemental list is filed.

(D) The period for which a certificate filed pursuant to this subsection or the corresponding subsection of prior law is effective may be terminated by the organization, effective at the end of a calendar quarter, upon giving 2 years' advance notice in writing, but only if, at the time of the receipt of such notice, the certificate has been in effect for a period of not less than 8 years. The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner, and with such official, as may be prescribed by regulations made under this chapter.

(E) If an organization described in subparagraph (A) employs both individuals who are in positions covered by a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof and individuals who are not in such positions, the organization shall divide its employees into two separate groups. One group shall consist of all employees who are in positions covered by such a fund or system and (i) are members of such fund or system, or (ii) are not members of

such fund or system but are eligible to become members thereof; and the other group shall consist of all remaining employees. An organization which has so divided its employees into two groups may file a certificate pursuant to subparagraph (A) with respect to the employees in either group, or may file a separate certificate pursuant to such subparagraph with respect to the employees in each group.

(F) If a certificate filed pursuant to this paragraph is effective for one or more calendar quarters prior to the quarter in which the certificate is filed, then—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return or pay tax), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

(2) TERMINATION OF WAIVER PERIOD BY SECRETARY.—If the Secretary finds that any organization which filed a certificate pursuant to this subsection or the corresponding subsection of prior law has failed to comply substantially with the requirements applicable with respect to the taxes imposed by this chapter or the corresponding provisions of prior law or is no longer able to comply with the requirements applicable with respect to the taxes imposed by this chapter, the Secretary shall give such organization not less than 60 days' advance notice in writing that the period covered by such certificate will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the organization. No notice of termination or of revocation thereof shall be given under this paragraph to an organization without the prior concurrence of the Secretary of Health, Education, and Welfare.

(3) NO RENEWAL OF WAIVER.—In the event the period covered by a certificate filed pursuant to this subsection or the corresponding subsection of prior law is terminated by the organization, no certificate may again be filed by such organization pursuant to this subsection.

(4) CONSTRUCTIVE FILING OF CERTIFICATE WHERE NO REFUND OR CREDIT OF TAXES HAS BEEN MADE.—

(A) In any case where—

(i) an organization described in section 501(c)(3) which is exempt from income tax under section 501(a) has not filed a valid waiver certificate under paragraph (1) of this subsection (or under the corresponding provision of prior law) as of the date of the enactment of this paragraph (or, if later, as of the earliest

date on which it satisfies clause (ii) of this subparagraph), but

(ii) the taxes imposed by sections 3101 and 3111 have been paid with respect to the remuneration paid by such organization to its employees, as though such a certificate had been filed, during any period (subject to subparagraph (B)(i)) of not less than three consecutive calendar quarters,

such organization shall be deemed (except as provided in subparagraph (B) of this paragraph) for purposes of subsection (b)(8)(B) and section 210(a)(8)(B) of the Social Security Act, to have filed a valid waiver certificate under paragraph (1) of this subsection (or under the corresponding provision of prior law) on the first day of the period described in clause (ii) of this subparagraph effective (subject to subparagraph (C)) on the first day of the calendar quarter in which such period began, and to have accompanied such certificate with a list containing the signature, address, and social security number (if any) of each employee with respect to whom the taxes described in such subparagraph were paid (and each such employee shall be deemed for such purposes to have concurred in the filing of the certificate).

(B) Subparagraph (A) shall not apply with respect to any organization if—

(i) the period referred to in clause (ii) of such subparagraph (in the case of that organization) terminated before the end of the earliest calendar quarter falling wholly or partly within the time limitation (as defined in section 205(c)(1)(B) of the Social Security Act) immediately preceding the date of the enactment of this paragraph, or

(ii) a refund or credit of any part of the taxes which were paid as described in clause (ii) of such subparagraph with respect to remuneration for services performed on or after the first day of the earliest calendar quarter falling wholly or partly within the time limitation (as defined in section 205(c)(1)(B) of the Social Security Act) immediately preceding the first day of the calendar quarter of enactment of this paragraph (other than a refund or credit which would have been allowed if a valid waiver certificate filed under paragraph (1) had been in effect) has been obtained by the organization or its employees prior to September 9, 1976, or

(iii) the organization, prior to the end of the period referred to in clause (ii) of such subparagraph (and, in the case of an organization organized on or before October 9, 1969, prior to October 19, 1976), had applied for a ruling or determination letter acknowledging it to be exempt from income tax under section 501(c)(3), and it subsequently received such ruling or determination letter and did not pay any taxes under sections 3101 and 3111 with respect to any employee with re-

spect to any quarter ending after the twelfth month following the date of mailing or such ruling or determination letter and did not pay any such taxes with respect to any quarter beginning after the later of (I) December 31, 1975 or (II) the date on which such ruling or determination letter was issued.

(C) In the case of any organization which is deemed under this paragraph to have filed a valid waiver certificate under paragraph (1), if—

(i) the period with respect to which the taxes imposed by sections 3101 and 3111 were paid by such organization (as described in subparagraph (A)(ii)) terminated prior to October 1, 1976, or

(ii) the taxes imposed by sections 3101 and 3111 were not paid during the period referred to in clause (i) (whether such period has terminated or not) with respect to remuneration paid by such organization to individuals who became its employees after the close of the calendar quarter in which such period began,

taxes under sections 3101 and 3111—

(iii) in the case of an organization which meets the requirements of this subparagraph by reason of clause (i), with respect to remuneration paid by such organization after the termination of the period referred to in clause (i) and prior to July 1, 1977; or

(iv) in the case of an organization which meets the requirements of this subparagraph by reason of clause (ii), with respect to remuneration paid prior to July 1, 1977, to individuals who became its employees after the close of the calendar quarter in which the period referred to in clause (i) began,

which remain unpaid on the date of the enactment of this subparagraph, or which were paid after October 19, 1976, but prior to the date of the enactment of this subparagraph, shall not be due or payable (or, if paid, shall be refunded); and the certificate which such organization is deemed under this paragraph to have filed shall not apply to any service with respect to the remuneration for which the taxes imposed by sections 3101 and 3111 (which remain unpaid on the date of the enactment of this subparagraph, or were paid after October 19, 1976, but prior to the date of the enactment of this subparagraph) are not due and payable (or are refunded) by reason of the preceding provisions of this subparagraph. In applying this subparagraph for purposes of title II of the Social Security Act, the period during which reports of wages subject to the taxes imposed by section 3101 and 3111 were made by any organization may be conclusively treated as the period (described in subparagraph (A)(ii)) during which the taxes imposed by such sections were paid by such organization.

(5) CONSTRUCTIVE FILING OF CERTIFICATE WHERE REFUND OR CREDIT HAS BEEN MADE AND NEW CERTIFICATE IS NOT FILED.—In any case where—

(A) an organization described in section 501(c)(3) which is exempt from income tax under section 501(a) would be deemed under paragraph (4) of this subsection to have filed a valid waiver certificate under paragraph (1) if it were not excluded from such paragraph (4) (pursuant to subparagraph (B)(ii) thereof) because a refund or credit of all or a part of the taxes described in paragraph (4)(A)(ii) was obtained prior to September 9, 1976; and

(B) such organization has not, prior to April 1, 1978, filed a valid waiver certificate under paragraph (1) which is effective for a period beginning on or before the first day of the first calendar quarter with respect to which such refund or credit was made (or, if later, with the first day of the earliest calendar quarter for which such certificate may be in effect under paragraph (1)(B)(iii)) and which is accompanied by the list described in paragraph (1)(A),

such organization shall be deemed, for purposes of subsection (b)(8)(B) and section 210(a)(8)(B) of the Social Security Act, to have filed a valid waiver certificate under paragraph (1) of this subsection on April 1, 1978, effective for the period beginning on the first day of the first calendar quarter with respect to which the refund or credit referred to in subparagraph (A) of this paragraph was made (or, if later, with the first day of the earliest calendar quarter falling wholly or partly within the time limitation (as defined in section 205(c)(1)(B) of the Social Security Act) immediately preceding the date of the enactment of this paragraph), and to have accompanied such certificate with a list containing the signature, address, and social security number (if any) of each employee described in subparagraph (A) of paragraph (4) including any employee with respect to whom taxes were refunded or credited as described in subparagraph (A) of this paragraph (and each such employee shall be deemed for such purposes to have concurred in the filing of the certificate). A certificate which is deemed to have been filed by an organization on April 1, 1978, shall supersede any certificate which may have been actually filed by such organization prior to that day except to the extent prescribed by the Secretary.

(6) APPLICATION OF CERTAIN PROVISIONS TO CASES OF CONSTRUCTIVE FILING.—All of the provisions of this subsection (other than subparagraphs (B), (F), and (H) of paragraph (1)), including the provisions requiring payment of taxes under sections 3101 and 3111 with respect to the services involved (except as provided in paragraph (4)(C)), shall apply with respect to any certificate which is deemed to have been filed by an organization on any day under paragraph (4) or (5), in the same way they would apply if the certificate had been actually filed on that day under paragraph (1); except that—

(A) the provisions relating to the filing of supplemental lists of concurring employees in the third sentence of paragraph (1)(A), and in paragraph (1)(C), shall apply to the extent prescribed by the Secretary;

(B) the provisions of paragraph (1)(E) shall not apply unless the taxes described in paragraph (4)(A)(ii) were paid

by the organization as though a separate certificate had been filed with respect to one or both of the groups to which such provisions relate; and

(C) the action of the organization in obtaining the refund or credit described in paragraph (5)(A) shall not be considered a termination of such organization's coverage period for purposes of paragraph (3). Any organization which is deemed to have filed a waiver certificate under paragraph (4) or (5) shall be considered for purposes of section 3102(b) to have been required to deduct the taxes imposed by section 3101 with respect to the services involved.

(7) BOTH EMPLOYEE AND EMPLOYER TAXES PAYABLE BY ORGANIZATION FOR RETROACTIVE PERIOD IN CASES OF CONSTRUCTIVE FILING.—Notwithstanding any other provision of this chapter, in any case where an organization described in paragraph (5)(A) has not filed a valid waiver certificate under paragraph (1) prior to April 1, 1978, and is accordingly deemed under paragraph (5) to have filed such a certificate on April 1, 1978, the taxes due under section 3101, with respect to services constituting employment by reason of such certificate for any period prior to that date (along with the taxes due under section 3111 with respect to such services and the amount of any interest paid in connection with the refund or credit described in paragraph (5)(A)) shall be paid by such organization from its own funds and without any deduction from the wages of the individuals who performed such services; and those individuals shall have no liability for the payment of such taxes.

(8) EXTENDED PERIOD FOR PAYMENT OF TAXES FOR RETROACTIVE COVERAGE.—Notwithstanding any other provision of this title, in any case where—

(A) an organization is deemed under paragraph (4) to have filed a valid waiver certificate under paragraph (1), but the applicable period described in paragraph (4)(A)(ii) has terminated and part or all of the taxes imposed by sections 3101 and 3111 with respect to remuneration paid by such organization to its employees after the close of such period remains payable notwithstanding paragraph (4)(C), or

(B) an organization described in paragraph (5)(A) files a valid waiver certificate under paragraph (1) by March 31, 1978, as described in paragraph (5)(B), or (not having filed such a certificate by that date) is deemed under paragraph (5) to have filed such a certificate on April 1, 1978, or

(C) an individual files a request under section 3 of Public Law 94-563, or under section 312(c) of the Social Security Amendments of 1977, to have service treated as constituting remuneration for employment (as defined in section 3121(b) and in section 210(a) of the Social Security Act),

the taxes due under sections 3101 and 3111 with respect to services constituting employment by reason of such certificate for any period prior to the first day of the calendar quarter in which the date of such filing or constructive filing occurs, or with respect to service constituting employment by reason of such request, may be paid in installments over an appropriate

period of time, as determined under regulations prescribed by the Secretary, rather than in a lump sum.

(l) AGREEMENTS ENTERED INTO BY DOMESTIC CORPORATIONS WITH RESPECT TO FOREIGN SUBSIDIARIES.—

(1) AGREEMENT WITH RESPECT TO CERTAIN EMPLOYEES OF FOREIGN SUBSIDIARIES.—The Secretary shall, at the request of any domestic corporation, enter into an agreement (in such form and manner as may be prescribed by the Secretary) with any such corporation which desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any one or more of its foreign subsidiaries (as defined in paragraph (8)) by all employees who are citizens of the United States, except that the agreement shall not be applicable to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign subsidiary of such domestic corporation. Such agreement shall be applicable with respect to citizens of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign subsidiary specified in the agreement. Such agreement shall provide—

(A) that the domestic corporation shall pay to the Secretary, at such time or times as the Secretary may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the domestic corporation will comply with such regulations relating to payments and reports as the Secretary may prescribe to carry out the purposes of this subsection.

(2) EFFECTIVE PERIOD OF AGREEMENT.—An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement; except that in case such agreement is amended to include the services performed for any other subsidiary and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other subsidiary only after the calendar quarter in which such amendment is executed.

(3) TERMINATION OF PERIOD BY A DOMESTIC CORPORATION.—The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated

with respect to any one or more of its foreign subsidiaries by the domestic corporation, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the domestic corporation by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign corporation shall terminate at the end of any calendar quarter in which the foreign corporation, at any time in such quarter, ceases to be a foreign subsidiary as defined in paragraph (8).

(4) TERMINATION OF PERIOD BY SECRETARY.—If the Secretary finds that any domestic corporation which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary shall give such domestic corporation not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the domestic corporation. No notice of termination or of revocation thereof shall be given under this paragraph to a domestic corporation without the prior concurrence of the Secretary of Health, Education, and Welfare.

(5) NO RENEWAL OF AGREEMENT.—If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the domestic corporation pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary pursuant to paragraph (4), the domestic corporation may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign subsidiary, such agreement may not thereafter be amended so as again to make it applicable with respect to such subsidiary.

(6) DEPOSITS IN TRUST FUNDS.—For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) as is reported to the Secretary pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

(7) OVERPAYMENTS AND UNDERPAYMENTS.—

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary within two years from the time such overpayment was made.

(8) DEFINITION OF FOREIGN SUBSIDIARY.—For purposes of this subsection and section 210(a) of the Social Security Act, a foreign subsidiary of a domestic corporation is—

(A) a foreign corporation not less than 20 percent of the voting stock of which is owned by such domestic corporation; or

(B) a foreign corporation more than 50 percent of the voting stock of which is owned by the foreign corporation described in subparagraph (A).

(9) DOMESTIC CORPORATION AS SEPARATE ENTITY.—Each domestic corporation which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign corporations, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(10) REGULATIONS.—Regulations of the Secretary to carry out the purposes of this subsection shall be designed to make the requirements imposed on domestic corporations with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

(m) SERVICE IN THE UNIFORMED SERVICES.—For purposes of this chapter—

(1) INCLUSION OF SERVICE.—The term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) ACTIVE DUTY.—The term "active duty" means "active duty" as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act, except that it shall also include "active duty for training" as described in such section.

(3) INACTIVE DUTY TRAINING.—The term "inactive duty training" means "inactive duty training" as described in such section 102.

(n) MEMBER OF A UNIFORMED SERVICE.—For purposes of this chapter, the term "member of a uniformed service" means any

person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or naval service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Universal Military Training and Service Act, has been selected for active military or naval service;

and has been ordered or directed to proceed to such place. The term does not include a temporary member of the Coast Guard Reserve.

(o) CREW LEADER.—For purposes of this chapter, the term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(p) PEACE CORPS VOLUNTEER SERVICE.—For purposes of this chapter, the term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

(q) TIPS INCLUDED FOR EMPLOYEE TAXES.—For purposes of this chapter other than for purposes of the taxes imposed by section

3111, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(r) ELECTION OF COVERAGE BY RELIGIOUS ORDERS.—

(1) CERTIFICATE OF ELECTION BY ORDER.—A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of such order, may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) electing to have the insurance system established by title II of the Social Security Act extended to services performed by its members in the exercise of duties required by such order or such subdivision thereof. Such certificate of election shall provide that—

(A) such election of coverage by such order or subdivision shall be irrevocable;

(B) such election shall apply to all current and future members of such order, or in the case of a subdivision thereof to all current and future members of such order who belong to such subdivision;

(C) all services performed by a member of such an order or subdivision in the exercise of duties required by such order or subdivision shall be deemed to have been performed by such member as an employee of such order or subdivision; and

(D) the wages of each member, upon which such order or subdivision shall pay the taxes imposed by sections 3101 and 3111, will be determined as provided in subsection (i)(4).

(2) DEFINITION OF MEMBER.—For purposes of this subsection, a member of a religious order means any individual who is subject to a vow of poverty as a member of such order and who performs tasks usually required (and to the extent usually required) of an active member of such order and who is not considered retired because of old age or total disability.

(3) EFFECTIVE DATE FOR ELECTION.—(A) A certificate of election of coverage shall be in effect, for purposes of subsection (b)(8)(A) and for purposes of section 210(a)(8)(A) of the Social Security Act, for the period beginning with whichever of the following may be designated by the order or subdivision thereof:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

Whenever a date is designated under clause (iii), the election shall apply to services performed before the quarter in which

the certificate is filed only if the member performing such services was a member at the time such services were performed and is living on the first day of the quarter in which such certificate is filed.

(B) If a certificate of election filed pursuant to this subsection is effective for one or more calendar quarters prior to the quarter in which such certificate is filed, then—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

(4) COORDINATION WITH COVERAGE OF LAY EMPLOYEES.—Notwithstanding the preceding provisions of this subsection, no certificate of election shall become effective with respect to an order or subdivision thereof, unless—

(A) if at the time the certificate of election is filed a certificate of waiver of exemption under subsection (k) is in effect with respect to such order or subdivision, such order or subdivision amends such certificate of waiver of exemption (in such form and manner as may be prescribed by regulations made under this chapter) to provide that it may not be revoked, or

(B) if at the time the certificate of election is filed a certificate of waiver of exemption under such subsection is not in effect with respect to such order or subdivision, such order or subdivision files such certificate of waiver of exemption under the provisions of such subsection except that such certificate of waiver of exemption cannot become effective at a later date than the certificate of election and such certificate of waiver of exemption must specify that such certificate of waiver of exemption may not be revoked. The certificate of waiver of exemption required under this subparagraph shall be filed notwithstanding the provisions of subsection (k)(3).

(s) CONCURRENT EMPLOYMENT BY TWO OR MORE EMPLOYERS.—For purposes of sections 3102, 3111 and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(t) SPECIAL RULE FOR DETERMINING WAGES SUBJECT TO EMPLOYER TAX IN CASE OF CERTAIN EMPLOYERS WHOSE EMPLOYEES RECEIVE INCOME FROM TIPS.—If the wages paid by an employer with respect to the employment during any month of an individual who (for

services performed in connection with such employment) receives tips which constitute wages, and to which section 3102(a) applies, are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act), the wages so paid shall be deemed for purposes of section 3111 to be equal to such total amount.

SEC. 3122. FEDERAL SERVICE.

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination whether an individual has performed service which constitutes employment as defined in section 3121(b), the determination of the amount of remuneration for such service which constitutes wages as defined in section 3121(a), and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121(a)(1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of

this section the Secretary of Transportation shall be deemed to be the head of such instrumentality.

SEC. 3123. DEDUCTIONS AS CONSTRUCTIVE PAYMENTS.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

SEC. 3124. ESTIMATE OF REVENUE REDUCTION.

The Secretary at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121(b)(9) and shall include such estimate in his annual report.

SEC. 3125. RETURNS IN THE CASE OF GOVERNMENTAL EMPLOYEES IN GUAM, AMERICAN SAMOA, AND THE DISTRICT OF COLUMBIA.

(a) GUAM.—The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(b) AMERICAN SAMOA.—The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(c) DISTRICT OF COLUMBIA.—In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Mayor of the District of Columbia or such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by

section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1).

SEC. 3126. SHORT TITLE.

This chapter may be cited as the "Federal Insurance Contributions Act."

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

SUBCHAPTER A. Tax on employees.
SUBCHAPTER B. Tax on employee representatives.
SUBCHAPTER C. Tax on employers.
SUBCHAPTER D. General provisions.

Subchapter A—Tax on Employees

Sec. 3201. Rate of tax. 730
Sec. 3202. Deduction of tax from compensation.

SEC. 3201. RATE OF TAX.

In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) of so much of the compensation paid in any calendar month to such employee for services rendered by him as is not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month.

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Subchapter B—Tax on Employee Representatives

Sec. 3211. Rate of tax. 730
Sec. 3212. Determination of compensation.

SEC. 3211. RATE OF TAX.

(a) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to 9.5 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a), 3101(b), 3111(a), and 3111(b) of so much of the compensation paid in any calendar month to such employee representative for services rendered by him as is not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month.

(b) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative.

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Subchapter C—Tax on Employers

Sec. 3221. Rate of tax. 731

SEC. 3221. RATE OF TAX.

(a) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 9.5 percent of so much of the compensation paid in any calendar month by such employer for services rendered to him as is, with respect to any employee for any calendar month, not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month, except that if an employee is paid compensation by more than one employer for services rendered during any calendar month, the tax imposed by this section shall apply to not more than an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month of the aggregate compensation paid to such employee by all such employers for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him to the employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer to such employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month. Where compensation for services rendered in a month is paid an employee by two or more employers, one of the employers who has knowledge of such joint employment may, by proper notice to the Secretary, and by agreement with such other employer or employers as to settlement of their respective liabilities under this section and section 3202, elect for the tax imposed by section 3201 and this section to apply to all of the compensation paid by such employer for such month as does not exceed the maximum amount of compensation in respect to which taxes are imposed by such section 3201 and this section; and in such a case the liability of such other employer or employers under this section and section 3202 shall be limited to the difference, if any, between the compensation paid by the electing employer and the maximum amount of compensation to which section 3201 and this section apply.

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Subchapter D—General Provisions

Sec. 3231. Definitions. 732
Sec. 3232. Court jurisdiction.
Sec. 3233. Short title.

SEC. 3231. DEFINITIONS.

(a) EMPLOYER.—For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Secretary, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) EMPLOYEE.—For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) if he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) EMPLOYEE REPRESENTATIVE.—For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employ-

er as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (45 U. S. C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) SERVICE.—For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1(c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration

for such service, no part of such remuneration shall be regarded as compensation;

Provided however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) COMPENSATION.—For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, (ii) tips (except as is provided under paragraph (3)), (iii) the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201, or (iv) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. Compensation which is earned during the period for which the Secretary shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an

"employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) An employee shall be deemed to be paid compensation in the period during which such compensation is earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of the tax imposed by section 3201 and other provisions of this chapter insofar as they relate to such tax, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(f) COMPANY.—For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

(g) CARRIER.—For purposes of this chapter, the term "carrier" means an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49.

(h) TIPS CONSTITUTING COMPENSATION, TIME DEEMED PAID.—For purposes of this chapter, tips which constitute compensation for purposes of the tax imposed under section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

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CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

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SEC. 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 3.4 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployed compensation account (established by section 905(a) of the Social Security Act); or

(2) 3.2 percent, in the case of such first calendar year and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

SEC. 3302. CREDITS AGAINST TAX.

(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS.—

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be

deemed to have been made on the date the return for the taxable year was filed under section 6071.

(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting "100 percent" for "90 percent".

(b) ADDITIONAL CREDIT.—In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31, of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

(c) LIMIT ON TOTAL CREDITS.—

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 percent, for each succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974.[4]

(3) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 15 percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

(d) DEFINITIONS AND SPECIAL RULES RELATING TO SUBSECTION (c).—

(1) RATE OF TAX DEEMED TO BE 3 PERCENT.—In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of the rate provided by such section.

(2) WAGES ATTRIBUTABLE TO A PARTICULAR STATE.—For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

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[4] See P.L. 94-45, § 110(b), regarding repayment of State loans, in Vol. II, p. 1648.

(3) ADDITIONAL TAXES INAPPLICABLE WHERE ADVANCES ARE REPAID BEFORE NOVEMBER 10 OF TAXABLE YEAR.—Paragraph (2) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) AVERAGE EMPLOYER CONTRIBUTION RATE.—For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-YEAR BENEFIT COST RATE.—For purposes of subparagraph (C) of subsection (c)(2), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) ROUNDING.—If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(2) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) DETERMINATION AND CERTIFICATION OF PERCENTAGES.—The percentage referred to in subsection (c)(2)(B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(e) SUCCESSOR EMPLOYER.—Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

SEC. 3303. CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE

(a) STATE STANDARDS.—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3

years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3).

(b) CERTIFICATION BY THE SECRETARY OF LABOR WITH RESPECT TO ADDITIONAL CREDIT ALLOWANCE.—

(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary of the Treasury the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12-month period only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any 12-month period ending on October 31, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on such October 31, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such 12-month period under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making

such findings, the Secretary of Labor shall not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

(c) DEFINITIONS.—As used in this section—

(1) RESERVE ACCOUNT.—The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) POOLED FUND.—The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) PARTIALLY POOLED ACCOUNT.—The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) GUARANTEED EMPLOYMENT ACCOUNT.—The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) YEAR.—The term "year" means any 12 consecutive calendar months.

(6) BALANCE.—The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) COMPUTATION DATE.—The term "computation date" means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) REDUCED RATE.—The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) VOLUNTARY CONTRIBUTIONS.—A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

(e) PAYMENTS BY CERTAIN NONPROFIT ORGANIZATIONS.—A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

(f) TRANSITION.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies, a State law may provide that an organization (or group of organizations) which elects before April 1, 1972, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before January 1, 1969, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its

election as heretofore described which is attributable under the State law to service performed in its employ, until the total of such compensation equals the amount—

(1) by which the contributions paid by such organization (or group) with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate.

(g) TRANSITIONAL RULE FOR UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies by reason of the enactment of the Unemployment Compensation Amendments of 1976, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law with respect to such service, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before the date of the enactment of this subsection, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to such service performed in its employ, until the total of such compensation equals the amount—

(1) by which the contributions paid by such organization (or group) on the basis of wages for such service with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of such service performed in its employ or wages paid for such service, whichever is appropriate.

SEC. 3304. APPROVAL OF STATE LAWS.[5]

(a) REQUIREMENTS.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions

[5] See P.L. 93-567, §§ 201-210 and §§ 220-223 (Emergency Jobs and Unemployment Assistance Act of 1974) in Vol. II, page 1626; P.L. 93-572, §§ 102-105 (Emergency Unemployment Compensation Act of 1974) in Vol. II, page 1631; and P.L. 94-566, §§ 116, 121, and 411 (Unemployment Compensation Amendments of 1976) in Vol. II, page 1669.

of section 3305(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U. S. C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that—

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution (other than an institution of higher education) to which section 3309(a)(1) applies,

compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms,

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services may be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess, and

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity may be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions, and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consulta-

tion with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act),

(B) any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence;

(15) the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on

the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that—

(A) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health, Education, and Welfare in regulations) for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes, and

(B) such safeguards are established as are necessary (as determined by the Secretary of Health, Education, and Welfare in regulations) to insure that such information is used only for the purposes authorized under subparagraph (A);

(17) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) NOTIFICATION.—The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) CERTIFICATION.—On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary of the Treasury each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period

ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year after 1971, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Employment Security Amendments of 1970 to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision. On October 31 of any taxable year after 1977, the Secretary shall not certify any State which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.

(d) NOTICE OF NONCERTIFICATION.—If at any time the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

(e) CHANGE OF LAW DURING 12-MONTH PERIOD.—Whenever—

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

(f) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—For purposes of subsection (a)(6), the term "institution of higher education" means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for it which awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

SEC. 3305. APPLICABILITY OF STATE LAW.

(a) INTERSTATE AND FOREIGN COMMERCE.—No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he

is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) FEDERAL INSTRUMENTALITIES IN GENERAL.—The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) NATIONAL BANKS.—Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) FEDERAL PROPERTY.—No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the

same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

[(e) Repealed.]

(f) AMERICAN VESSELS.—The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) VESSELS OPERATED BY GENERAL AGENTS OF UNITED STATES.—The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed by officers and members of the crew on or in connection with American vessels—

(1) owned by or bareboat chartered to the United States, and

(2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) REQUIREMENT BY STATE OF CONTRIBUTIONS.—Any State may, as to service performed on account of which contributions are made pursuant to subsection (g)—

(1) require contributions from persons performing such service under its unemployment compensation law or temporary

disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) GENERAL AGENT AS LEGAL ENTITY.—Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(j) DENIAL OF CREDITS IN CERTAIN CASES.—Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).

SEC. 3306. DEFINITIONS.

(a) EMPLOYER.—For purposes of this chapter—

(1) IN GENERAL.—The term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

(2) AGRICULTURAL LABOR.—In the case of agricultural labor, the term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a

different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

(3) DOMESTIC SERVICE.—In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term "employer" means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $1,000 or more for such service.

(4) SPECIAL RULE.—A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

(b) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $6,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $6,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability,

or

(D) death;

(3) any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a), or

(D) under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219 for such payment;

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made;

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217;

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, (ii) retirement for disability, or (iii) retirement after attaining an age

specified in the plan referred to in subparagraph (B) or in a pension plan of the employer, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans); or

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

(c) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed before January 1, 1982, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351);

(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than $50, or

(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an

individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

(18) service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F) or (J)), and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

(d) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable

with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c)(9).

(e) STATE AGENCY.—For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) UNEMPLOYMENT FUND.—For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

(g) CONTRIBUTIONS.—For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) COMPENSATION.—For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) EMPLOYEE.—For purposes of this chapter, the term "employee" has the meaning assigned to such term by section 3121(d), except that subparagraphs (B) and (C) of paragraph (3) shall not apply.

(j) STATE, UNITED STATES, AND AMERICAN EMPLOYER.—For purposes of this chapter—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) UNITED STATES.—The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) AMERICAN EMPLOYER.—The term "American employer" means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(k) AGRICULTURAL LABOR.—For purposes of this chapter, the term "agricultural labor" has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

"(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;"

[(l) Repealed.]

(m) AMERICAN VESSEL AND AIRCRAFT.—For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(n) VESSELS OPERATED BY GENERAL AGENTS OF UNITED STATES.—Notwithstanding the provisions of subsection (c)(6), service performed by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

(o) SPECIAL RULE IN CASE OF CERTAIN AGRICULTURAL WORKERS.—

(1) CREW LEADERS WHO ARE REGISTERED OR PROVIDE SPECIALIZED AGRICULTURAL LABOR.—For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

(A) if—

(i) such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or

(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(B) if such individual is not an employee of such other person within the meaning of subsection (i).

(2) OTHER CREW LEADERS.—For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)—

(A) such other person and not the crew leader shall be treated as the employer of such individual; and

(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(3) CREW LEADER.—For purposes of this subsection, the term "crew leader" means an individual who—

(A) furnishes individuals to perform agricultural labor for any other person,

(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(p) CONCURRENT EMPLOYMENT BY TWO OR MORE EMPLOYERS.—For purposes of sections 3301, 3302, and 3306(b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

SEC. 3307. DEDUCTIONS AS CONSTRUCTIVE PAYMENTS.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any

political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

SEC. 3308. INSTRUMENTALITIES OF THE UNITED STATES.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

SEC. 3309. STATE LAW COVERAGE OF SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS OR GOVERNMENTAL ENTITIES.

(a) STATE LAW REQUIREMENTS.—For purposes of section 3304(a)(6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term "employment" solely by reason of paragraph (8) of section 3306(c), and

(B) service excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c); and

(2) the State law shall provide that a governmental entity or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

(b) SECTION NOT TO APPLY TO CERTAIN SERVICE.—This section shall not apply to service performed—

(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such service is performed by an individual in the exercise of his duties—

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(E) in a position which, under or pursuant to the State law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training; and

(6) by an inmate of a custodial or penal institution.

(c) NONPROFIT ORGANIZATIONS MUST EMPLOY 4 OR MORE.—This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

SEC. 3310. JUDICIAL REVIEW.

(a) IN GENERAL.—Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

(b) FINDINGS OF FACT.—The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and

may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) JURISDICTION OF COURT; REVIEW.—The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(d) STAY OF SECRETARY OF LABOR'S ACTION.—

(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary of Labor's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary of Labor's action and including such other relief as may be necessary to preserve status or rights.

(e) PREFERENCE.—Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary of Labor or the State, shall receive a preference and shall be heard and determined as expeditiously as possible.

SEC. 3311. SHORT TITLE.

This chapter may be cited as the "Federal Unemployment Tax Act".

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

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SEC. 3402. INCOME TAX COLLECTED AT SOURCE.

(a) REQUIREMENT OF WITHHOLDING.—Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables prescribed by the Secretary. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978. For purposes of applying such tables, the term "the amount of wages" means the amount by which the

wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table prescribed under subsection (b)(1).

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(i) ADDITIONAL WITHHOLDING.—The Secretary is authorized by regulations to provide, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree (in such form as the Secretary may by regulations prescribe) to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

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CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

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SEC. 3501. COLLECTION AND PAYMENT OF TAXES.

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

SEC. 3502. NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME.

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

SEC. 3503. ERRONEOUS PAYMENTS.

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

SEC. 3504. ACTS TO BE PERFORMED BY AGENTS.

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as

are required of employers under this title and as the Secretary may specify. Except as may be otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

SEC. 3506. INDIVIDUALS PROVIDING COMPANION SITTING PLACEMENT SERVICES.

(a) IN GENERAL.—For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

(b) DEFINITION.—For purposes of this section, the term "sitters" means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

SEC. 3507. ADVANCE PAYMENT OF EARNED INCOME CREDIT.

(a) GENERAL RULE.—Except as otherwise provided in this section, every employer making payment of wages to an employee with respect to whom an earned income eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment to such employee equal to such employee's earned income advance amount.

(b) EARNED INCOME ELIGIBILITY CERTIFICATE.—For purposes of this title, an earned income eligibility certificate is a statement furnished by an employee to the employer which—

(1) certifies that the employee will be eligible to receive the credit provided by section 43 for the taxable year,

(2) certifies that the employee does not have an earned income eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer, and

(3) states whether or not the employee's spouse has an earned income eligibility certificate in effect.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

(c) EARNED INCOME ADVANCE AMOUNT.—

(1) IN GENERAL.—For purposes of this title, the term "earned income advance amount" means, with respect to any payroll period, the amount determined—

(A) on the basis of the employee's wages from the employer for such period, and

(B) in accordance with tables prescribed by the Secretary.

(2) ADVANCE AMOUNT TABLES.—The tables referred to in paragraph (1)(B)—

(A) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables, and

(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

(i) of not more than 10 percent of the first $5,000 of earned income, which

(ii) phases out between $6,000 and $10,000 of earned income, or

(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

(i) of not more than 10 percent of the first $2,500 of earned income, which

(ii) phases out between $3,000 and $5,000 of earned income.

(d) PAYMENTS TO BE TREATED AS PAYMENTS OF WITHHOLDING AND FICA TAXES.

(1) IN GENERAL.—For purposes of this title, payments made by an employer under subsection (a) to his employees for any payroll period—

(A) shall not be treated as the payment of compensation, and

(B) shall be treated as made out of—

(i) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding), and

(ii) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

(iii) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes),

as if the employer had paid to the Secretary, on the day on which the wages are paid to the employees, an amount equal to such payments.

(2) ADVANCE PAYMENTS EXCEED TAXES DUE.—In the case of any employer, if for any payroll period the aggregate amount of earned income advance payments exceeds the sum of the amounts referred to in paragraph (1)(B), each such advance payment shall be reduced by an amount which bears the same ratio to such excess as such advance payment bears to the aggregate amount of all such advance payments.

(3) EMPLOYER MAY MAKE FULL ADVANCE PAYMENTS.—The Secretary shall prescribe regulations under which an employer may elect (in lieu of any application of paragraph (2))—

(A) to pay in full all earned income advance amounts, and

(B) to have additional amounts paid by reason of this paragraph treated as the advance payment of taxes imposed by this title.

(4) FAILURE TO MAKE ADVANCE PAYMENTS.—For purposes of this title (including penalties), failure to make any advance payment under this section at the time provided therefor shall be treated as the failure at such time to deduct and withhold under chapter 24 an amount equal to the amount of such advance payment.

(e) FURNISHING AND TAKING EFFECT OF CERTIFICATES.—For purposes of this section—

(1) WHEN CERTIFICATE TAKES EFFECT.—

(A) FIRST CERTIFICATE FURNISHED.—An earned income eligibility certificate furnished the employer in cases in which no previous such certificate had been in effect for the calendar year shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished (or if later, the first day of the calendar year for which furnished).

(B) LATER CERTIFICATE.—An earned income eligibility certificate furnished the employer in cases in which a previous such certificate had been in effect for the calendar year shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished. For purposes of this section, the term "status determination date" means January 1, May 1, July 1, and October 1 of each year.

(2) PERIOD DURING WHICH CERTIFICATE REMAINS IN EFFECT.—An earned income eligibility certificate which takes effect under this section for any calendar year shall continue in effect with respect to the employee during such calendar year until revoked by the employee or until another such certificate takes effect under this section.

(3) CHANGE OF STATUS.—

(A) REQUIREMENT TO REVOKE OR FURNISH NEW CERTIFICATE.—If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of—

(i) making the employee ineligible for the credit provided by section 43 for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee,

the employee shall, within 10 days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by paragraph (1)(B) for a later certificate and shall be made in such form as the Secretary shall by regulations prescribe.

(B) CERTIFICATE NO LONGER IN EFFECT.—If, after an employee has furnished an earned income eligibility certificate under this section which certifies that such a certificate is in effect with respect to the spouse of the employee, such a certificate is no longer in effect with respect to such spouse, then the employee may furnish the employer with a new earned income eligibility certificate.

(4) FORM AND CONTENTS OF CERTIFICATE.—Earned income eligibility certificates shall be in such form and contain such other information as the Secretary may by regulations prescribe.

(5) TAXABLE YEAR DEFINED.—The term "taxable year" means the last taxable year of the employee under subtitle A beginning in the calendar year in which the wages are paid.

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* Note: An asterisk following a title XVI citation means that the reference is to Grants to States for Aid to the Aged, Blind, or Disabled, or for Such Aid and Medical Assistance for the Aged (and not to Supplemental Security Income for the Aged, Blind, and Disabled).

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Secretary HHS; Authority and Duty—Con.
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Secretary HHS; Authority and Duty—Con.
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Secretary HHS; Authority and Duty—Con.
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Secretary HHS; Authority and Duty—Con.
Enter into Agreement with—Con.
Secretary of State and Attorney General; aliens: 1621(d)(2)
Skilled nursing facility: 1866(c)(2)
State (or State Agency)
Certify accredited hospitals: 1864(c)
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Parent locatability: 453(f)
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Reimbursement from State; medicaid eligibility determination: 1634
Secretary of Labor; work incentive program: 407(e)
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Carrier: 1842(a)
HMO: 1876(a)(3)(A), (a)(3)(B), (h)(1), (i)(1), (i)(2), (i)(6)(B), (k)
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Advisory council: 1122(i)(3)
All-inclusive fee for surgical procedure: 1833(i)(4)(B)
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Calculating amounts for items and services: 1866(a)(2)(A)
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Cost effectiveness program: 1154(f)(1)
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Availability of extended care services: 1861(v)(1)(G)(i)
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Initial enrollment period: 1837(d)
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Secretary HHS; Authority and Duty—Con.
Establish—Con.
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Provider Reimbursement Review Board: 1878(a)
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Reimbursement procedures: 1833(f)(3)
Renal disease network areas: 1881(c)(1)(A)
Standard overhead; fair fee: 1833(i)(2)(B)
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Target reimbursement rate for home dialysis: 1881(b)(6)
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Establish and maintain earnings records: 201(a)(3), (a)(4), (b)(1), (b)(2), (g)(2); 205(c)(2)(A); 1817(a)(1), (a)(2), (f)(1)
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Amount
Necessary to pay half of benefits and costs: 1839(b)(2), (c)(1), (c)(4)
Offset by underpayment to State: 1003(b)(2)
Payable to State: 3(b)(1); 403(b)(1); 423(b)(1); 455(b)(1); 474(d)(1); 506(b)(1); 705(d), (f)(2); 1003(b)(1); 1403(b)(1); 1603(b)(1)*; 1903(d)(1); 2002(b)(1)
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Disbursement for quarter: 201(g)(1)(A)
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Reasonable cost of service: 1814(h)(2)
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Secretary HHS; Authority and Duty—Con.
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No authority over State action: 402(a)(5); 505(a)(3); 1602(a)(5)*
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Term of agreement: 1866(a)(1)
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Court review: 218(t)(1)
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Acceptable
Prevailing charge: 1842(b)(3)
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Accreditation by AOA assures conditions met: 1865(a)
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Appropriate
Criteria for renal disease network areas: 1881(c)(1)(A)
Desirable; supportive services: 1881(b)(8)(D)
Institution certified by State: 1864(a)
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Determination removed and not likely to recur: 1862(d)(2)
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Institutions accredited by JCAH: 1865(a)
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Effective and efficient administration: 1816(b)(1)(A)
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Correct amount of payments due: 1631(b)(1)
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Carrier's performance: 1842(b)(2)
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Secretary HHS; Authority and Duty—Con.
Find—Con.
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Excessive; charges: 1862(d)(1)(B)
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Management information system: 402(e)(2)(B)
Prescribed requirements: 452(d)(2)(B)
Failure to enroll: 1837(d)
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Inpatient hospital services: 506(f)(3)
Provider: 1814(b)
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Health Maintenance Organization
Failed to carry out contract: 1876(i)(4)
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Incapability; application: 216(i)(2)(F)(i), (i)(2)(F)(ii)(III)
Institution has significant deficiencies: 1865(b)
Justified; higher prevailing charge: 1842(b)(3)
Limits; adjust; family size: 1903(f)(1)(B)(ii)
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Administrative provisions: 1616(b)(2); 1631(g)(4)(B)
Conditions for payment to State: 426(b); 506(c)
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Efficient operation: 402(a)(5); 1003(a)(3), (a)(4)
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Financial security measures: 1861(o)(7)
Health and Safety
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Secretary HHS; Authority and Duty—Con.
Find—Con.
Necessary—Con.
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Diagnostic tests: 1861(s)(3)
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Extension of term of agreement: 1866(a)(1)
Records to determine degree and intensity of treatment: 1861(f)(3), (g)(3)
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Health and safety: 1861(e)(9)
Rural health clinic: 1861(aa)(2)(J)
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Terms and conditions for HMO: 1876(i)(6)(C)
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Reason for termination removed: 1866(c)(1), (d)
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Secretary HHS; Authority and Duty—Con.
Find—Con.
State—Con.
Did not have effective child support program: 403(h)
Disability determinations faulty: 221(a)
Has adequate fire and safety code: 1861(j)(13)
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Review inefficient: 1155(a)(7)(B)
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Substantial failure to timely review long-stay cases: 1866(d)
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Assistance provided for: 1816(b)(1)(B)
Waiver conditions met: 1861(e)(5)
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Compensation Rate for
HIBAC: 1867(a)
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Date for reallotment of funds: 424
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Explanation to providers: 1816(e)(3)
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Individual: 1862(d)(3); 1869(b)(1); 1876(f)
Institution or agency: 1869(c)
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Give
Special attention to undergraduate training: 511
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Secretary HHS; Authority and Duty—Con.
Hear; Hearing—Con.
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HMO services: 1876(f)
Services furnished: 1160(b)(4); 1862(d)(3)
SSI claim: 1631(c)(1)
Claimant's representative: 206(a); 1631(d)(2)
Intermediate care facility: 1910(c)(2)
Provider of Services
Designation: 1816(e)(3)(B)
Failure of performance: 1816(g)(2)
Institution or agency: 1869(c)
Services furnished: 1160(b)(4); 1862(d)(3)
Skilled nursing facility: 1910(c)(2)
State
Federal payment withheld: 3(c)(2); 4; 404(a); 443; 507; 1003(c)(2); 1004; 1116(a)(2); 1403(c)(2); 1404; 1603(c)(2)*; 1604*; 1904
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Secretary HHS; Authority and Duty—Con.
Investigate
Amount payable quarterly to State: 403(b)(1)
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Explanation for amount of premium: 1839(b)(2), (c)(3)
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Compliance; child support program: 404(c)
Plan adequacy: 409(a)(1)
Uniformity of medical services, supplies and equipment: 1842(b)(3)
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Worker fails to furnish data about work: 203(h)(3)
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Agreement with State; capital expenditures: 1122(b)
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Secretary HHS; Authority and Duty—Con.
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Totalization agreements: 233(d)
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Federal service; wages: 205(p)(1)
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Claimant; right to hearing: 205(b); 1160(b)(4); 1631(c)(1); 1862(d)(3)
Claimant's representative; right to hearing: 206(a); 1631(d)(2)
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Individual and provider why payment made: 1879(a)
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Institution or person; overpayment to be recovered: 1914(c)
Intermediate care facility; cancellation of approval: 1910(c)(1)
Physician; right to hearing: 1128(c)
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Public and facility; final decision: 1866(f)(3)
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Railroad Retirement Board
Railroad jurisdiction: 210(l)(4)(B)
Skilled nursing facility; cancellation of approval: 1910(c)(1)
State
Approval/disapproval of State system: 1903(r)(4)(A)
Approval of methods and standards: 1902(a)(13)(D)
Assessed amount due: 218(q)(3)
Basis for decision: 218(s)
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Secretary HHS; Authority and Duty—Con.
Notify—Con.
State—Con.
Federal payment withheld: 3(c)(2); 4; 404(a); 443; 471(b); 507; 1003(c)(2); 1004; 1116(a)(2); 1403(c)(2); 1404; 1603(c)(2)*; 1604*; 1904
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Termination of provider agreement: 1866(c)(3)
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Items as reasonable cost: 1861(v)(1)(H)
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Decision without notice: 1866(f)(2)
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Individual as inpatient: 1861(v)(1)(G)(iv)(II); 1902(h)(4)(B)
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Advice and recommendation of specialist: 1110(a)(2)
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Information; earnings record: 205(c)(2)(A)
Offset overpayment to State: 1903(d)(5)
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Adjusted amount to State: 1603(b)(2)*
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End-stage renal disease: 1881(b)(3)
Health maintenance organization: 1876(a)(3)(A)(iii)
In advance; interim payment: 1876(a)(2)
Installments to State; child support: 455(b)(2)
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Reasonable rate per unit: 1861(v)(5)(B)
Secretary HHS; Authority and Duty—Con.
Pay—Con.
On Basis of—Con.
Target reimbursement rate: 1881(b)(4)
Presumptively eligible claimants: 1631(a)(4)
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Secretary of Labor the State's share: 443
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Adjusted amount: 1903(d)(2)
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Amount withheld from beneficiary: 1631(g)(1)
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Methods and procedures: 1003(a)(3)(end); 1603(a)(4)(end)*
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Physician-patient; interference prohibited: 216(i)(1)
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Accounting procedures: 1876(a)(3)(C)(i)
Audit coordination and joint conduct: 505(a)(16)(B); 1902(a)(42)(B)
Circumstances
Gross income from trade or business; ineligibility: 1611(d)
Conditions under which State services are not economical: 1003(a)(3)(E); 1603(a)(4)(E)*
Consultation frequency; PSRO: 1155(a)(8)
Cooperative arrangements: 1902(a)(11)
Criteria
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Secretary HHS; Authority and Duty—Con.
Prescribe—Con.
Extent of cooperation necessary for grant: 513(c)
Form and detail for HMO budget and enrollment forecast: 1876(a)(2)
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Necessary drugs or services; disabled person: 1612(b)(4)(B)(ii); 1614(a)(3)(D)
Resources essential to self-support: 1613(a)(3)
Manner and form of request for return of child: 472(g)
Manner for provider to identify excess charges: 1866(a)(2)(B)(ii)(II)
Month; earned income disregard: 402(a)(8)(C)(i)
$100 rounding: 1903(f)(1)(C)
Period
Good cause: 407(b)(1)(B)
Provision of services: 1003(a)(3)(A)(iii), (a)(3)(B); 1603(a)(4)(A)(iii)*, (a)(4)(B)*
Requesting hearing; earnings record revision: 205(c)(7)
Time; resources disposition: 1613(b)
Work refused: 402(a)(8)(C)(ii)
Portion of Standard of Need
Shelter allowance: 412(c)(3)
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Earnings excludable: 223(d)(4)
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Adjustment for excess payment: 1870(b)
Adjustment of
Monthly gross income; family size: 2002(a)(5)(B), (a)(6)(A), (a)(6)(B)(i), (a)(6)(B)(ii), (a)(14)(A)
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SSI program, including evidence and proof: 1631(d)(1)
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Secretary HHS; Authority and Duty—Con.
Prescribe—Con.
Regulations—Con.
Application
Parent Locator information: 453(d)
Requirement: 1814(f)(4); 1835(a)(1), (b)(2)
Authorized person to represent dependent child; Parent Locator Service: 453(c)(3)
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Claimant's representative; recognition requirements: 206(a)
Cost of services: 1833(a)(3)
Criteria
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Define; publish and make generally available: 2004(2)
Diagnostic services: 1861(aa)(2)(G)
Dialysis services: 1881(b)
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Determination: 221(g)
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Interest on assistance: 1612(b)(12)
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Disclosure; tax return information: 1106(a)
Earnings; substantial gainful activity: 223(d)(4)
Entitlement and amount of benefits: 1869(a)
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"Full-time" student; define: 202(d)(7)(A)
Good cause for failure to timely report deduction event: 203(l)
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HMO requirements: 1876(i)(2)(B)
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Customary charge: 1903(i)(3)
Services; inpatient: 506(f)(3)
Incapable of filing application: 216(i)(2)(F)(i)
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Itemized bill requirements: 1814(d)(2); 1835(b)(2)
Kidney donation reimbursement: 1881(d)
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Secretary HHS; Authority and Duty—Con.
Prescribe—Con.
Regulations—Con.
Maximum fee for representation of beneficiary: 1631(d)(2)
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Medicare Supplemental Policy Certification procedure: 1882(h)
Membership in network organization: 1881(c)(1)(C)
Nonpayment; public assistance: 228(d)
Organizational requirements: 454(3)
Parent Locator Service use in parental kidnaping: 463(b)
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State: 2005
Period aid will be denied: 402(a)(19)(F)
Physical therapist standards: 1861(p)
Plan for review of care provided: 1902(a)(33)(A)
Preadmission diagnostic services: 1833(a)(1)(F)(i), (a)(1)(F)(ii), (a)(5)
Premiums deducted from benefits: 1840(a)(1), (b)(1)
Provider or facility; agreement requirements: 1881(b)(5)
Quantity limit; antigens: 1861(s)(2)(G)
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Recognition of representative of beneficiary: 1631(d)(2)
Report by State of wages paid: 218(e)(1)(B)
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State claim for payment: 1132(a)
Substantial gainful activity; earnings: 223(d)(4)
Substantial services criteria; annual earnings test: 203(f)(4)(A)
SMI premiums; payment: 1840(e)
Title II: 205(a)
Training, education, and experience: 1861(aa)(3)
Utilization review plan: 1861(cc)(2)(G)
Secretary HHS; Authority and Duty—Con.
Prescribe—Con.
Regulations—Con.
Wife's reduced benefit: 202(q)(5)(A)(i)
Written request filing requirements: 1814(a)(1); 1835(a)(1)
Requirements
Corroborative evidence: 1631(e)(1)(B)
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Administer SSI program, including evidence and proof: 1631(d)(1)
Claimant's representative; recognition requirements: 206(a)
Limit representative's fees: 206(a)
Maximum fee for representation of beneficiary: 1631(d)(2)
Recognition of representative of beneficiary: 1631(d)(2)
Safety requirements for power-operated vehicle: 1861(s)(6)
Services for State to provide: 1003(c)(1)
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Availability of assistance: 1902(a)(10)(C)
Deprived of parental support: 407(a)
Eligibility: 1902(a)(17)
Enrollment fee: 1902(a)(14)(B)(i)
Full-time student: 402(a)(8)(A)(i)
Getting child support: 454(4)(B)
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